

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 117

FINAL READING

Introduced by Banking, Commerce and Insurance Committee; Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

Read first time January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 21-2005,  
2 44-319.07, 44-501, 44-507, 44-508, 44-522, 44-1104,  
3 44-4501, 44-4519, 44-5110, 44-5111, 44-5120, 44-5137,  
4 44-5140, 44-5141, 44-5152, 44-5501, 44-5502, 44-5504,  
5 44-7504, and 48-446, Reissue Revised Statutes of  
6 Nebraska, and sections 44-5103, 44-5153, 44-8101,  
7 44-8102, 44-8103, 44-8104, 44-8105, 44-8106, 44-8107,  
8 48-144.03, 48-146.01, and 77-908, Revised Statutes  
9 Cumulative Supplement, 2006; to change provisions  
10 relating to the Business Corporation Act, the Long-Term  
11 Care Insurance Act, the Surplus Lines Insurance Act,  
12 securities, workers' compensation insurance, fire

1 insurance policies, standard provisions and forms, the  
2 Viatical Settlements Act, nonadmitted insurers, and the  
3 Insurers Investment Act; to provide training requirements  
4 for long-term care insurance providers; to provide for  
5 a tax on premiums of policies procured by industrial  
6 insureds and premiums received by captive insurers;  
7 to rename the Nebraska Senior Protection in Annuity  
8 Transactions Act; to adopt the Captive Insurers Act; to  
9 define and redefine terms; to provide powers and duties;  
10 to harmonize provisions; to provide a duty for the  
11 Revisor of Statutes; and to repeal the original sections.

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

1           Section 1. Section 21-2005, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           21-2005 (1) The Secretary of State shall collect the fees  
4 prescribed by this section when the documents described in this  
5 subsection are delivered to him or her for filing:

6           (a) Articles of incorporation or documents relating to  
7 domestication:

8           (i) If the capital stock is \$10,000 or less, the fee  
9 shall be \$60;

10           (ii) If the capital stock is more than \$10,000 but does  
11 not exceed \$25,000, the fee shall be \$100;

12           (iii) If the capital stock is more than \$25,000 but does  
13 not exceed \$50,000, the fee shall be \$150;

14           (iv) If the capital stock is more than \$50,000 but does  
15 not exceed \$75,000, the fee shall be \$225;

16           (v) If the capital stock is more than \$75,000 but does  
17 not exceed \$100,000, the fee shall be \$300; and

18           (vi) If the capital stock is more than \$100,000, the fee  
19 shall be \$300, plus \$3 additional for each \$1,000 in excess of  
20 \$100,000.

21           For purposes of computing this fee, the capital stock of  
22 a corporation organized under the laws of any other state that  
23 domesticates in this state, and which stock does not have a par  
24 value, shall be deemed to have a par value of an amount per share  
25 equal to the amount paid in as capital for each of such shares

1 as are then issued and outstanding, and in no event less than one  
2 dollar per share.

3 (b) Articles of incorporation or documents relating to  
4 domestication if filed by an insurer holding a certificate of  
5 authority issued by the Director of Insurance, the fee shall be  
6 \$300.

7 ~~(b)~~ (c) Application for use of indistinguishable  
8 name...\$25

9 ~~(e)~~ (d) Application for reserved name...\$25

10 ~~(d)~~ (e) Notice of transfer of reserved name...\$25

11 ~~(e)~~ (f) Application for registered name...\$25

12 ~~(f)~~ (g) Application for renewal of registered name...\$25

13 ~~(g)~~ (h) Corporation's statement of change of registered  
14 agent or registered office or both...\$25

15 ~~(h)~~ (i) Agent's statement of change of registered  
16 office for each affected corporation...\$25 not to exceed a total  
17 of...\$1,000

18 ~~(i)~~ (j) Agent's statement of resignation...No fee

19 ~~(j)~~ (k) Amendment of articles of incorporation...\$25

20 ~~(k)~~ (l) Restatement of articles of incorporation...\$25  
21 with amendment of articles...\$25

22 ~~(l)~~ (m) Articles of merger or share exchange...\$25

23 ~~(m)~~ (n) Articles of dissolution...\$45

24 ~~(n)~~ (o) Articles of revocation of dissolution...\$25

25 ~~(o)~~ (p) Certificate of administrative dissolution...No

1 fee

2 ~~(p)~~ (q) Application for reinstatement...\$25

3 ~~(q)~~ (r) Certificate of reinstatement...No fee

4 ~~(r)~~ (s) Certificate of judicial dissolution...No fee

5 ~~(s)~~ (t) Application for certificate of authority...\$130

6 ~~(t)~~ (u) Application for amended certificate of  
7 authority...\$25

8 ~~(u)~~ (v) Application for certificate of withdrawal...\$25

9 ~~(v)~~ (w) Certificate of revocation of authority to  
10 transact business...No fee

11 ~~(w)~~ (x) Articles of correction...\$25

12 ~~(x)~~ (y) Application for certificate of existence or  
13 authorization...\$25

14 ~~(y)~~ (z) Any other document required or permitted to be  
15 filed by the Business Corporation Act...\$25.

16 (2) The Secretary of State shall collect a recording fee  
17 of five dollars per page in addition to the fees set forth in  
18 subsection (1) of this section.

19 (3) The Secretary of State shall collect the following  
20 fees for copying and certifying the copy of any filed document  
21 relating to a domestic or foreign corporation:

22 (a) One dollar per page for copying; and

23 (b) Ten dollars for the certificate.

24 (4) All fees set forth in this section shall be collected  
25 by the Secretary of State and remitted to the State Treasurer

1 and credited two-thirds to the General Fund and one-third to the  
2 Corporation Cash Fund.

3 Sec. 2. Section 44-319.07, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 44-319.07 (1) The depositing insurer or assessment  
6 association may, from time to time, exchange for the deposited  
7 securities, or any of them, other securities eligible for deposit  
8 if the aggregate value of such deposit will not thereby be reduced  
9 below the amount required by sections 44-319.01 to 44-319.13. Upon  
10 application of the depositing insurer or assessment association,  
11 the director may approve the withdrawal of securities which  
12 are in excess of the amount required by sections 44-319.01 to  
13 44-319.13. Insurers and assessment associations may, upon an  
14 application approved by the director, withdraw all or any part of  
15 the securities so deposited upon good cause therefor being shown.  
16 Securities so withdrawn shall, except if withdrawn as the result  
17 of a merger, consolidation, or total reinsurance, be used to pay  
18 excess losses only and shall be restored within such time and under  
19 such conditions as the director may direct by order.

20 (2) If the depositing insurer or assessment association  
21 fails to comply with the requirements of subsection (1) of this  
22 section or the rules and regulations adopted and promulgated  
23 pursuant to section 44-319.11, such insurer or assessment  
24 association shall forfeit five hundred dollars for each such  
25 failure. The director shall collect and remit the forfeitures to

1 the State Treasurer for distribution in accordance with Article  
2 VII, section 5, of the Constitution of Nebraska.

3           Sec. 3. Section 48-146.01, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

5           ~~48-146.01~~ (1) For purposes of this section:

6           (a) Assigned risk employer means a Nebraska employer that  
7 is in good faith entitled to, but is unable to obtain, workers'  
8 compensation insurance through ordinary methods; and ~~Assigned~~  
9 ~~risk employer does not include an employer who is in default on~~  
10 ~~workers' compensation premiums, who has failed to reimburse an~~  
11 ~~insurer for amounts to be repaid pursuant to workers' compensation~~  
12 ~~insurance written on a policy with a deductible, who has failed to~~  
13 ~~provide an insurer reasonable access to books and records necessary~~  
14 ~~for a premium audit, or who has defrauded or attempted to defraud~~  
15 ~~an insurer; and~~

16           (b) Director means the Director of Insurance.

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

25           ~~(b)~~ (2)(a) The director shall enter into an agreement

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

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



1           (c) If the assigned risk system described in subdivisions  
2 (2) (a) and (b) of this section ceases to be viable because no  
3 qualified insurer is willing to provide workers' compensation  
4 coverage at an average rate level of two and one-half times  
5 the prospective loss costs approved for an advisory organization  
6 pursuant to section 44-7511 without also requiring substantial  
7 sharing of losses with all other workers' compensation insurers  
8 writing workers' compensation insurance in this state and  
9 risk management pools created under the Intergovernmental Risk  
10 Management Act, then the director may, after consultation with  
11 insurers authorized to issue workers' compensation insurance  
12 policies in this state, create a reasonable alternative assigned  
13 risk system involving the sharing of premiums and losses for  
14 assigned risk employers among all such workers' compensation  
15 insurers writing workers' compensation insurance in this state  
16 and such risk management pools. If established, such alternative  
17 assigned risk system shall not utilize an average rate level  
18 of less than two and one-half times the prospective loss costs  
19 approved for an advisory organization pursuant to section 44-7511.

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

22           (4) ~~Any~~ An employer shall not be considered to be in good  
23 faith entitled to be covered by workers' compensation insurance  
24 under this section if:

25           (a) The employer which is required to establish a safety

1 committee pursuant to sections 48-443 to 48-445 and ~~which~~ is not in  
2 compliance with such sections; ~~shall not be entitled to be covered~~  
3 ~~by workers' compensation insurance under this section.~~

4 (b) The employer is in default on workers' compensation  
5 premiums;

6 (c) The employer has failed to reimburse an insurer for  
7 amounts to be repaid pursuant to workers' compensation insurance  
8 written on a policy with a deductible;

9 (d) The employer has failed to provide an insurer  
10 reasonable access to books and records necessary for a premium  
11 audit;

12 (e) The employer has defrauded or attempted to defraud an  
13 insurer; or

14 (f) The employer is found to have been owned or  
15 controlled by persons who owned or controlled a prior employer that  
16 is or would be ineligible for coverage pursuant to subdivisions  
17 (4)(b) through (e) of this section.

18 Sec. 4. Section 44-501, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 44-501 No policy or contract of fire and lightning  
21 insurance, including a renewal thereof, shall be made, issued,  
22 used, or delivered by any insurer or by any insurance producer or  
23 representative of an insurer on property within this state other  
24 than such as shall conform as nearly as practicable to blanks,  
25 size of type, context, provisions, agreements, and conditions with

1 the 1943 Standard Fire Insurance Policy of the State of New York,  
2 a copy of which shall be filed in the office of the Director  
3 of Insurance as standard policy for this state, and no other or  
4 different provision, agreement, condition, or clause shall in any  
5 manner be made a part of such contract or policy or be endorsed  
6 thereon or delivered therewith except as provided in subdivisions  
7 (1) through (11) of this section.

8 (1) The name of the company, its location and place of  
9 business, the date of its incorporation or organization, the state  
10 or country under which such company is organized, the amount of  
11 paid-up capital stock, whether it is a stock, mutual, reciprocal,  
12 or assessment company, the names of its officers, the number and  
13 date of the policy, and appropriate company emblems may be printed  
14 on policies issued on property in this state. Any insurer organized  
15 under special charter provisions may so indicate upon its policy  
16 and may add a statement of the plan under which it operates in this  
17 state.

18 In lieu of the facsimile signatures of the president and  
19 secretary of the insurer on such policy, there may appear the  
20 signature or signatures of such persons as are duly authorized  
21 by the insurer to execute the contract. No such policy shall be  
22 void if the facsimile signature or signatures of any officer of  
23 the company shall not correspond with the actual persons who are  
24 such officers at the inception of the contract if such policy is  
25 countersigned by a duly authorized agent of the insurer.

1                   (2) Printed or written forms of description and  
2 specifications or schedules of the property covered by any  
3 particular policy and any other matter necessary to express clearly  
4 all the facts and conditions of insurance on any particular  
5 risk, which facts or conditions shall in no case be inconsistent  
6 with or a waiver of any of the provisions or conditions of  
7 the standard policy herein provided for, may be written upon or  
8 attached or appended to any policy issued on property in this  
9 state. Appropriate forms of supplemental contracts, contracts, or  
10 endorsements, whereby the interest in the property described in  
11 such policy shall be insured against one or more of the perils  
12 which insurer is empowered to assume, may be used in connection  
13 with the standard policy. Such forms of contracts, supplemental  
14 contracts, or endorsements attached or printed thereon may contain  
15 provisions and stipulations inconsistent with the standard policy  
16 if applicable only to such other perils. The pages of the standard  
17 policy may be renumbered and rearranged for convenience in the  
18 preparation of individual contracts and to provide space for the  
19 listing of rates and premiums for coverages insured thereunder or  
20 under endorsements attached or printed thereon and such other data  
21 as may be included for duplication on daily reports for office  
22 records.

23                   (3) A company, corporation, or association organized or  
24 incorporated under and in pursuance of the laws of this state  
25 or elsewhere, if entitled to do business in this state, may with

1 the approval of the Director of Insurance, if the same is not  
2 already included in the standard form as filed in the office of  
3 the Department of Insurance, print on its policies any provision  
4 which it is required by law to insert therein if the provision is  
5 not in conflict with the laws of this state or the United States  
6 or with the provisions of the standard form provided for in this  
7 section, but such provision shall be printed apart from the other  
8 provisions, agreements, or conditions of the policy and in type  
9 not smaller than the body of the policy and a separate title, as  
10 follows: Provisions required by law to be stated in this policy,  
11 and be a part of the policy.

12 (4) There may be endorsed on the outside of any policy  
13 provided for in this section for the name, with the words insurance  
14 producer and place of business, of any insurance producer, either  
15 by writing, printing, stamping, or otherwise. There may also be  
16 added, with the approval of the Director of Insurance, a statement  
17 of the group of companies with which the company is financially  
18 affiliated and the usual company medallion.

19 (5) When two or more companies, each having previously  
20 complied with the laws of this state, unite to issue a joint  
21 policy, there may be expressed in the headline of each policy the  
22 fact of the severalty of the contract and also the proportion of  
23 premiums to be paid to each company and the proportion of liability  
24 which each company agrees to assume. In the printed conditions of  
25 such policy, the necessary change may be made from the singular to

1 plural number when reference is made to the companies issuing such  
2 policy.

3 (6) This section shall not apply to motor vehicle,  
4 inland marine, or ocean marine insurance, reinsurance contracts  
5 between insurance companies, or insurance that does not cover  
6 risks of a personal nature. ~~The Director of Insurance may approve~~  
7 An insurer may file with the director, pursuant to the Property  
8 and Casualty Insurance Rate and Form Act, any form of policy  
9 which includes coverage against the peril of fire and substantial  
10 coverage against other perils without complying with the provisions  
11 of this section if such policy with respect to the peril of fire  
12 includes provisions which are the substantial equivalent of the  
13 minimum provisions of the standard policy provided for in this  
14 section and if the policy is complete as to all its terms without  
15 reference to any other document.

16 (7) If the policy is made by a mutual assessment or  
17 other company having special regulations lawfully applicable to  
18 its organization, membership, policies, or contracts of insurance,  
19 such regulations shall apply to and form a part of the policy as  
20 the same may be written or printed upon or attached or appended  
21 thereto.

22 (8) ~~Policies of assessment~~ Assessment associations may be  
23 issued issue policies with such modifications as shall be ~~approved~~  
24 in writing by the Department of Insurance, filed with the director  
25 pursuant to the Property and Casualty Insurance Rate and Form Act.

1           (9) Any other coverage which a company is authorized to  
2 write under the laws of this state may be written in combination  
3 with a fire insurance policy.

4           (10) The policy shall provide that claims involving total  
5 loss situations shall be paid in accordance with section 44-501.02.

6           (11) Notwithstanding any other provision of this section,  
7 ~~the Director of Insurance may approve~~ an insurer may file, pursuant  
8 to the Property and Casualty Insurance Rate and Form Act, any form  
9 of policy with variations in terms and conditions from the standard  
10 policy provided for in this section.

11           Sec. 5. Section 44-507, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           44-507 The policies of any insurance company not  
14 organized under the laws of this state may, if ~~approved by the~~  
15 ~~Department of Insurance,~~ filed with the director pursuant to the  
16 Property and Casualty Insurance Rate and Form Act, contain any  
17 provisions which the law of the state, territory, district, or  
18 country under which the company is organized prescribes, shall be  
19 in such policies when issued in this state, and the policies of any  
20 insurance company organized under the laws of this state may, when  
21 issued or delivered in any other state, territory, district, or  
22 country, contain any provision required by the laws of the state,  
23 territory, district, or country in which ~~the same~~ such policies are  
24 issued, ~~anything in the provisions of~~ sections 44-501 to 44-510 to  
25 the contrary notwithstanding.

1           Sec. 6. Section 44-508, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           44-508 The policies or contracts of insurance covering  
4 legal liability for injury to a person or persons caused ~~through~~  
5 by the ownership, operation, use, or maintenance of ~~automobiles~~  
6 an automobile issued by any domestic or foreign company shall, if  
7 ~~approved by the Department of Insurance,~~ filed with the director  
8 pursuant to the Property and Casualty Insurance Rate and Form Act,  
9 contain a provision ~~to the effect~~ that the insolvency or bankruptcy  
10 of the assured shall not release the company from the payment of  
11 damages for injury sustained or loss occasioned during the life  
12 of the policy, and, in case of such insolvency or bankruptcy, an  
13 action may be maintained within the terms and limits of the policy  
14 by the injured person or his or her heirs against the insurer.  
15 ~~company.~~

16           Sec. 7. Section 44-522, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           44-522 (1) ~~The Department of Insurance shall not approve~~  
19 any No insurer may file an insurance policy filed for approval  
20 with the department, as required by the Property and Casualty  
21 Insurance Rate and Form Act, which insures against loss or damage  
22 to property or against legal liability from any cause unless such  
23 policy contains appropriate provisions for cancellation thereof by  
24 either the insurer or the insured and for nonrenewal thereof by the  
25 insurer.



1           (2) On any policy or binder of property, marine, or  
2 liability insurance, as specified in section 44-201, the insurer  
3 shall give the insured sixty days' written notice prior to  
4 cancellation or nonrenewal of such policy or binder, except that  
5 the insurer may cancel upon ten days' written notice to the insured  
6 in the event of nonpayment of premium or if such policy or binder  
7 has a specified term of sixty days or less unless the policy  
8 or binder has previously been renewed. The requirements of this  
9 subsection shall apply to a cancellation initiated by a premium  
10 finance company for nonpayment of premium. The provisions of this  
11 subsection and subsection (4) of this section shall not apply to  
12 nonrenewal of a policy or binder which has a specified term of  
13 sixty days or less unless the policy or binder has previously been  
14 renewed. Such notice shall state the reason for cancellation or  
15 nonrenewal.

16           (3) Notwithstanding subsection (2) of this section, no  
17 policy of property, marine, or liability insurance, as specified in  
18 section 44-201, which has been in effect for more than sixty days  
19 shall be canceled by the insurer except for one of the following  
20 reasons:

21           (a) Nonpayment of premium;

22           (b) The policy was obtained through a material  
23 misrepresentation;

24           (c) Any insured has submitted a fraudulent claim;

25           (d) Any insured has violated any of the terms and

1 conditions of the policy;

2 (e) The risk originally accepted has substantially  
3 increased;

4 (f) Certification to the Director of Insurance of loss of  
5 reinsurance by the insurer which provided coverage to the insurer  
6 for all or a substantial part of the underlying risk insured; or

7 (g) The determination by the director that the  
8 continuation of the policy could place the insurer in violation of  
9 the insurance laws of this state.

10 (4) Notice of cancellation or nonrenewal shall be sent by  
11 registered, certified, or first-class mail to the insured's last  
12 mailing address known to the insurer. If sent by first-class mail,  
13 a United States Postal Service certificate of mailing shall be  
14 sufficient proof of receipt of notice on the third calendar day  
15 after the date of the certificate.

16 (5) For purposes of this section:

17 (a) An insurer's substitution of insurance upon renewal  
18 which results in substantially equivalent coverage shall not be  
19 considered a cancellation of or a refusal to renew a policy; and

20 (b) The transfer of a policyholder between insurers  
21 within the same insurance group shall be considered a cancellation  
22 or a refusal to renew a policy only if the transfer results  
23 in policy coverage or rates substantially less favorable to the  
24 insured.

25 (6) The requirements of subsections (2), (3), and (4)

1 of this section shall not apply to automobile insurance coverage,  
2 insurance coverage issued under the Nebraska Workers' Compensation  
3 Act, insurance coverage on growing crops, or insurance coverage  
4 which is for a specified season or event and which is not subject  
5 to renewal or replacement.

6 (7) All policy forms issued for delivery in Nebraska  
7 shall conform to this section.

8 Sec. 8. Section 44-1104, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 44-1104 (1) The director may suspend, revoke, or refuse  
11 to issue or renew a license if the director finds that:

12 (a) There was any material misrepresentation in the  
13 application for the license;

14 (b) The applicant or licensee or any officer, partner,  
15 member, or key management personnel is subject to a final  
16 administrative action or is otherwise shown to be untrustworthy  
17 or incompetent;

18 (c) The viatical settlement provider demonstrates a  
19 pattern of unreasonable payments to viators;

20 (d) The applicant or licensee or any officer, partner,  
21 member, or key management personnel has been found guilty of, or  
22 has pleaded guilty or nolo contendere to, any felony or a Class  
23 I, II, or III misdemeanor, regardless of whether a judgment of  
24 conviction has been entered by the court;

25 (e) The viatical settlement provider has entered into any

1 viatical settlement contract that has not been approved pursuant to  
2 the Viatical Settlements Act;

3 (f) The viatical settlement provider has failed to honor  
4 contractual obligations set out in a viatical settlement contract;

5 (g) The licensee no longer meets the requirements for  
6 initial licensure;

7 (h) The viatical settlement provider has assigned,  
8 transferred, or pledged a viaticated policy to a person other  
9 than a viatical settlement provider licensed in this state, a  
10 viatical settlement purchaser, an accredited investor or qualified  
11 institutional buyer as defined respectively in Regulation D, Rule  
12 501, or Rule 144A of the federal Securities Act of 1933, as the act  
13 existed on September 1, 2001, a financing entity, a special purpose  
14 entity, or a related provider trust;

15 (i) The applicant or licensee or any officer, partner,  
16 member, or key management personnel has violated any provision of  
17 the Viatical Settlements Act; or

18 (j) The licensee has failed to respond to the department  
19 within fifteen working days after receipt of an inquiry from the  
20 department.

21 (2) ~~If the~~ The director denies a license application ~~or~~  
22 ~~suspends, revokes, or refuses to renew~~ may suspend or revoke a  
23 license, the director shall conduct pursuant to subsection (1) of  
24 this section after notice and a hearing held in accordance with the  
25 Administrative Procedure Act.

1           (3) If the director denies a license application or  
2 refuses to renew a license pursuant to subsection (1) of this  
3 section, he or she shall notify the applicant or licensee of the  
4 reason for such denial or refusal of renewal. The applicant or  
5 licensee has thirty days after receipt of such notification to  
6 demand a hearing. The hearing shall be held within thirty days  
7 after receipt of such demand by the director and shall be held in  
8 accordance with the Administrative Procedure Act.

9           Sec. 9. Section 44-4501, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           44-4501 Sections 44-4501 to 44-4520 and section 10 of  
12 this act shall be known and may be cited as the Long-Term Care  
13 Insurance Act.

14           Sec. 10. (1) An individual may not sell, solicit,  
15 or negotiate long-term care insurance unless the individual is  
16 licensed as an insurance producer for health or sickness and  
17 accident insurance and has completed a one-time training course on  
18 or before August 1, 2008, and ongoing training every twenty-four  
19 months thereafter. All training shall meet the requirements of  
20 subsection (2) of this section.

21           (2) The one-time training course required by subsection  
22 (1) of this section shall be no less than eight hours in length,  
23 and the required ongoing training shall be no less than four  
24 hours in length. All training required under subsection (1) of  
25 this section shall consist of topics related to long-term care

1 insurance, long-term care services, and, if applicable, qualified  
2 state long-term insurance partnership programs, including, but not  
3 limited to:

4 (a) State and federal regulations and requirements and  
5 the relationship between qualified state long-term care insurance  
6 partnership programs and other public and private coverage of  
7 long-term care services, including medicaid;

8 (b) Available long-term care services and providers;

9 (c) Changes or improvements in long-term care services or  
10 providers;

11 (d) Alternatives to the purchase of private long-term  
12 care insurance;

13 (e) The effect of inflation on benefits and the  
14 importance of inflation protection; and

15 (f) Consumer suitability standards and guidelines.

16 Training required by subsection (1) of this section shall  
17 not include any sales or marketing information, materials, or  
18 training other than those required by state or federal law.

19 (3)(a) Insurers subject to the Long-Term Care Insurance  
20 Act shall obtain verification that the insurance producer receives  
21 training required by subsection (1) of this section before a  
22 producer is permitted to sell, solicit, or negotiate the insurer's  
23 long-term care insurance products. Records shall be maintained in  
24 accordance with section 44-5905 and shall be made available to the  
25 director upon request.

1           (b) Insurers subject to the act shall maintain records  
2 with respect to the training of its producers concerning the  
3 distribution of its partnership policies that will allow the  
4 director to provide assurance to the Department of Health and  
5 Human Services Finance and Support that producers have received  
6 the training required by subsection (1) of this section and that  
7 producers have demonstrated an understanding of the partnership  
8 policies and their relationship to public and private coverage of  
9 long-term care, including medicaid, in this state. These records  
10 shall be maintained in accordance with section 44-5905 and shall be  
11 made available to the director upon request.

12           (4) The satisfaction of the training requirements in any  
13 state shall be deemed to satisfy the training requirements of the  
14 State of Nebraska.

15           (5) The training requirements of subsection (1) of this  
16 section may be approved as continuing education courses pursuant to  
17 sections 44-3901 to 44-3913.

18           Sec. 11. Section 44-4519, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           44-4519 The director may adopt and promulgate rules  
21 and regulations to carry out the Long-Term Care Insurance Act,  
22 including minimum standards for insurance producer training.

23           Sec. 12. Section 44-5103, Revised Statutes Cumulative  
24 Supplement, 2006, is amended to read:

25           44-5103 For purposes of the Insurers Investment Act:

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

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

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



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

14           (5) Custodian means:

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

1 condition of doing business therein, custodian may include a bank  
2 or trust company incorporated or organized under the laws of a  
3 country other than the United States that is regulated as such by  
4 that country's government or an agency thereof that shall at all  
5 times during which it acts as a custodian pursuant to the Insurers  
6 Investment Act be no less than adequately capitalized as determined  
7 by the standards adopted by international banking authorities and  
8 that is legally qualified to accept custody of securities; or

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

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

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

21 (8) Director means the Director of Insurance;

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

25 (10) Mortgage means a consensual interest created by a

1 real estate mortgage, a trust deed on real estate, or a similar  
2 instrument;

3 (11) Obligation means a bond, debenture, note, or other  
4 evidence of indebtedness or a participation, certificate, or other  
5 evidence of an interest in any of the foregoing;

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

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

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

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

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

24 (17) Treasury/Reserve Automated Debt Entry Securities  
25 System and Treasury Direct system mean the book-entry securities

1 systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31  
2 U.S.C. 3101 et seq. The operation of the systems are subject to 31  
3 C.F.R. part 357 et seq.

4 Sec. 13. Section 44-5110, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 44-5110 (1) An insurer may invest in an individual  
7 interest of a pool of obligations or a fractional interest of a  
8 single obligation if:

9 (a) The certificate of participation or interest or the  
10 confirmation of participation or interest in the investment is  
11 issued in the name of the insurer, a custodian bank, or the nominee  
12 of either; and

13 (b) The certificate or confirmation, if held by a  
14 custodian bank, is kept separate and apart from the investment  
15 of others so that at all times the participation or interest  
16 may be identified as belonging solely to the insurer making the  
17 investment.

18 (2) If an investment is not evidenced by a certificate,  
19 adequate evidence of the insurer's investment shall be obtained  
20 from the issuer or its transfer or recording agent and retained  
21 by the insurer, custodian bank, or clearing corporation except as  
22 provided in subdivision (2) of section 44-5109. For purposes of  
23 this subsection, adequate evidence shall mean a written receipt  
24 or other verification issued by the depository, issuer, or  
25 custodian bank which shows that the investment is held for the

1 insurer. Transfers of ownership or investments held as described in  
2 subdivisions (1)(c) and (2) of section 44-5109 and this section may  
3 be evidenced by a bookkeeping entry on the books of the issuer of  
4 the investment, its transfer or recording agent, or the clearing  
5 corporation without physical delivery of certificates, if any,  
6 evidencing the insurer's investment.

7 (3) Any investment made pursuant to this section shall  
8 also conform with the following:

9 (a) The investment in which the interest is purchased  
10 shall be authorized under the Insurers Investment Act; and

11 (b) The insurer's pro rata interest in the investment  
12 shall be in the same percentage as the par amount of its interest  
13 bears to the outstanding par amount of the investment at the time  
14 of purchase. +

15 ~~(c) Any person, other than an insurer, that is the~~  
16 ~~obligor of the investment instrument or the investor from whom~~  
17 ~~the interest is purchased shall have outstanding senior debt or~~  
18 ~~commercial paper having a minimum quality rating as described in~~  
19 ~~subdivision (2) of section 44-5112 or subsection (2) of section~~  
20 ~~44-5138; and~~

21 ~~(d) Any insurer that is the obligor of the investment~~  
22 ~~instrument or the investor from whom the interest is purchased~~  
23 ~~shall be rated A or better by A.M. Best's rating service or the~~  
24 ~~corresponding rating of a successor organization approved by the~~  
25 ~~director.~~

1           (4) An investment may be authorized under this section  
2 although its interest does not include the right to exercise the  
3 investor's rights or enforce the investor's remedies according to  
4 the provisions of the issue.

5           (5) Any investment made pursuant to this section shall be  
6 purchased pursuant to a written participation agreement.

7           ~~(6) An insurer's investments authorized under this~~  
8 ~~section shall not exceed ten percent of its admitted assets.~~

9           Sec. 14. Section 44-5111, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           44-5111 Any investment limitation in the Insurers  
12 Investment Act based upon the amount of the insurer's admitted  
13 assets or policyholders surplus shall relate to admitted assets  
14 or policyholders surplus as shown by the most recent financial  
15 statement filed by the insurer pursuant to section 44-322 unless  
16 the insurer's admitted assets or policyholders surplus is revised  
17 as a result of an examination conducted pursuant to the Insurers  
18 Examination Act, in which case the results of the examination shall  
19 control. Except as otherwise provided by law, an investment shall  
20 be measured by the lesser of actual cost or admitted value at the  
21 time of acquisition. If there is no actual cost at the time of  
22 acquisition, the investment shall be measured at the lesser of fair  
23 value or admitted value.

24           For purposes of this section, actual cost shall mean  
25 means the total amount invested, expended, or which should

1 be reasonably anticipated to be invested or expended in the  
2 acquisition or organization of any investment, insurer, or  
3 subsidiary, including all organizational expenses or contributions  
4 to capital and surplus whether or not represented by the purchase  
5 of capital stock or issuance of other securities.

6 Sec. 15. Section 44-5120, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 44-5120 (1) An insurer may lend its securities if:

9 (a) The securities are created or existing under the  
10 laws of the United States and, simultaneously with the delivery  
11 of the loaned securities, the insurer receives collateral from the  
12 borrower consisting of cash or securities backed by the full faith  
13 and credit of the United States or an agency or instrumentality  
14 of the United States, except that any securities provided as  
15 collateral shall not be of lesser quality than the quality of the  
16 loaned securities. Any investment made by an insurer with cash  
17 received as collateral for loaned securities shall be made in the  
18 same kinds, classes, and investment grades as those authorized  
19 under the Insurers Investment Act and in a manner that recognizes  
20 the liquidity needs of the transaction or is used by the insurer  
21 for its general corporate purposes. The securities provided as  
22 collateral shall have a market value when the loan is made of at  
23 least one hundred two percent of the market value of the loaned  
24 securities;

25 (b) The securities are created or existing under the

1 laws of Canada or are securities described in section 44-5137 and,  
2 simultaneously with the delivery of the loaned securities, the  
3 insurer receives collateral from the borrower consisting of cash  
4 or securities backed by the full faith and credit of the foreign  
5 country, except that any securities provided as collateral shall  
6 not be of lesser quality than the quality of the loaned securities.  
7 Any investment made by an insurer with cash received as collateral  
8 for loaned securities shall be made in the same kinds, classes, and  
9 investment grades as those authorized under the Insurers Investment  
10 Act and in a manner that recognizes the liquidity needs of the  
11 transaction or is used by the insurer for its general corporate  
12 purposes. The securities provided as collateral shall have a market  
13 value when the loan is made of at least one hundred two percent of  
14 the market value of the loaned securities;

15 (c) Prior to the loan, the borrower or any indemnifying  
16 party furnishes the insurer with or the insurer otherwise obtains  
17 the most recent financial statement of the borrower or any  
18 indemnifying party;

19 (d) The insurer receives a reasonable fee related to the  
20 market value of the loaned securities and to the term of the loan;

21 (e) The loan is made pursuant to a written loan  
22 agreement; and

23 (f) The borrower is required to furnish by the close of  
24 each business day during the term of the loan a report of the  
25 market value of all collateral and the market value of all loaned



1 securities as of the close of trading on the previous business  
2 day. If at the close of any business day the market value of the  
3 collateral for any loan outstanding to a borrower is less than  
4 one hundred percent of the market value of the loaned securities,  
5 the borrower shall deliver by the close of the next business day  
6 an additional amount of cash or securities. The market value of  
7 the additional securities, together with the market value of all  
8 previously delivered collateral, shall equal at least one hundred  
9 two percent of the market value of the loaned securities for that  
10 loan.

11 ~~(2) If at the close of any business day the market value~~  
12 ~~of the collateral for all loans outstanding to a borrower is less~~  
13 ~~than one hundred two percent of the market value of the loaned~~  
14 ~~securities, the borrower shall deliver by the close of the next~~  
15 ~~business day an additional amount of cash or securities. The market~~  
16 ~~value of the additional securities, together with the market value~~  
17 ~~of all previously delivered collateral, shall equal at least one~~  
18 ~~hundred two percent of the market value of the loaned securities~~  
19 ~~for all loans to that borrower. This subsection does not apply if~~  
20 ~~the insurer receives cash collateral for all loans outstanding to~~  
21 ~~the borrower.~~

22 ~~(3)~~ (2) For purposes of this section, market value shall  
23 include includes accrued interest.

24 ~~(4)~~ (3) An insurer shall effect securities lending only  
25 through the services of a custodian bank or similar entity as

1 approved by the director.

2 ~~(5)~~ (4) An insurer's investments authorized under this  
3 section shall not exceed ten percent of its admitted assets.

4 Sec. 16. Section 44-5137, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 44-5137 (1) An insurer may invest in securities or other  
7 investments (a) issued in, (b) located in, (c) denominated in the  
8 currency of, (d) whose ultimate payment amounts of principal or  
9 interest are subject to fluctuations in the currency of, or (e)  
10 whose obligors are domiciled in countries other than the United  
11 States or Canada, which are substantially of the same kinds and  
12 classes as those authorized for investment under the Insurers  
13 Investment Act.

14 (2) Subject to the limitations in subsection (3) of this  
15 section:

16 (a) An insurer's investments authorized under subsection  
17 (1) of this section in any one foreign jurisdiction whose sovereign  
18 debt has a 1 designation from the Securities Valuation Office shall  
19 not exceed ten percent of the insurer's admitted assets;

20 (b) An insurer's investments authorized under subsection  
21 (1) of this section in any one foreign jurisdiction whose sovereign  
22 debt has a 2 or 3 designation from the Securities Valuation Office  
23 shall not exceed five percent of the insurer's admitted assets;

24 (c) An insurer's investments authorized under subsection  
25 (1) of this section ~~shall not include investments~~ in any one

1 foreign jurisdiction whose sovereign debt has a 4, 5, or 6  
2 designation from the Securities Valuation Office shall not exceed  
3 three percent of the insurer's admitted assets;

4 (d) An insurer's investments authorized under subsection  
5 (1) of this section denominated in any one foreign currency shall  
6 not exceed two percent of the insurer's admitted assets; and

7 (e) An insurer's investments authorized under subsection  
8 (1) of this section denominated in foreign currencies, in the  
9 aggregate, shall not exceed five percent of the insurer's admitted  
10 assets; and -

11 (f) An insurer's investments authorized under subsection  
12 (1) of this section shall not be considered denominated in a  
13 foreign currency if the acquiring insurer enters into one or  
14 more contracts in transactions permitted under section 44-5149 to  
15 exchange all payments made on the foreign currency denominated  
16 investments for United States currency at a rate which effectively  
17 insulates the investment cash flows against future changes in  
18 currency exchange rates during the period the contract or contracts  
19 are in effect.

20 (3) An insurer's investments authorized under subsection  
21 (1) of this section shall not exceed, in the aggregate, ~~fifteen~~  
22 twenty percent of its admitted assets.

23 (4) An insurer which is authorized to do business in a  
24 foreign country or which has outstanding insurance, annuity, or  
25 reinsurance contracts on lives or risks resident or located in

1 a foreign country may, in addition to the investments authorized  
2 by subsection (1) of this section, invest in securities and  
3 investments (a) issued in, (b) located in, (c) denominated in the  
4 currency of, (d) whose ultimate payment amounts of principal and  
5 interest are subject to fluctuations in the currency of, or (e)  
6 whose obligors are domiciled in such foreign countries, which are  
7 substantially of the same kinds and classes as those authorized for  
8 investment under the act.

9 (5) An insurer's investments authorized under subsection  
10 (4) of this section and cash in the currency of such country which  
11 is at any time held by such insurer, in the aggregate, shall not  
12 exceed the greater of (a) one and one-half times the amount of  
13 its reserves and other obligations under such contracts or (b) the  
14 amount which such insurer is required by law to invest in such  
15 country.

16 (6) Any investment in debt obligations authorized under  
17 this section shall have a minimum quality rating as described in  
18 subdivision (2) of section 44-5112.

19 (7) An insurer's investments made under this section  
20 shall be aggregated with investments of the same kinds and classes  
21 made under the Insurers Investment Act except section 44-5153 for  
22 purposes of determining compliance with the limitations contained  
23 in other sections.

24 Sec. 17. Section 44-5140, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   44-5140 (1) An insurer may invest in the preferred stock  
2 of any corporation which:

3                   (a) Has retained earnings of not less than one million  
4 dollars;

5                   (b) Has earned and paid regular dividends at the regular  
6 prescribed rate each year upon its preferred stock, if any is or  
7 has been outstanding, for not less than five years immediately  
8 preceding the purchase of such preferred stock or during such part  
9 of such five-year period as it has had preferred stock outstanding;  
10 and

11                   (c) Has had no material defaults in principal payments  
12 of or interest on any obligations of such corporation and its  
13 subsidiaries having a priority equal to or higher than those  
14 purchased during the period of five years immediately preceding the  
15 date of acquisition or, if outstanding for less than five years, at  
16 any time since such obligations were issued.

17                   The earnings of and the regular dividends paid by all  
18 predecessor, merged, consolidated, or purchased corporations may be  
19 included through the use of consolidated or pro forma statements.

20                   (2) Except as authorized under the Insurance Holding  
21 Company System Act, an insurer shall not own more than five percent  
22 of the total issued shares of stock of any corporation other than  
23 an insurer.

24                   (3) A life insurer's investments authorized under this  
25 section shall not exceed the greater of ~~ten~~ twenty-five percent of

1 its admitted assets or one hundred percent of its policyholders  
2 surplus, nor shall a life insurer's investments authorized under  
3 this section that are not rated P-1 or P-2 by the Securities  
4 Valuation Office exceed ten percent of its admitted assets.

5 Sec. 18. Section 44-5141, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 44-5141 (1) An insurer may invest in the common stock or  
8 rights to purchase or sell common stock of any corporation which  
9 has retained earnings of not less than one million dollars, except  
10 that an investment may be made in any corporation having a majority  
11 of its operations in this state which has retained earnings of  
12 not less than two hundred fifty thousand dollars. The earnings of  
13 all predecessor, merged, consolidated, or purchased corporations  
14 shall be included through the use of consolidated or pro forma  
15 statements.

16 (2)(a) An insurer may invest in equity interests or  
17 rights to purchase or sell equity interests in business entities,  
18 other than general partnerships, ~~created or existing under the~~  
19 ~~laws of the United States or Canada or any state or province~~  
20 ~~thereof.~~

21 (b)(i) A life insurer's investments authorized under this  
22 subsection shall not exceed fifty percent of its policyholders  
23 surplus.

24 (ii) A life insurer shall not invest under this  
25 subsection in any investment which the life insurer may invest in

1 under section 44-5140 or 44-5144 or subsection (1) of this section.

2 (3) Except as authorized under the Insurance Holding  
3 Company System Act, an insurer shall not invest in more than ten  
4 percent of the total equity interests in any business entity other  
5 than an insurer.

6 (4) A life insurer's investments authorized under this  
7 section shall not exceed one hundred percent of its policyholders  
8 surplus.

9 Sec. 19. Section 44-5152, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 44-5152 (1) ~~Subject~~ In addition to investments otherwise  
12 authorized under the Insurers Investment Act and subject to the  
13 limitations in subsections (2) through (4) and (3) of this section,  
14 an insurer may invest in obligations having 3, 4, 5, and 6  
15 designations from the Securities Valuation Office.

16 (2) Subject to the limitation in subsection ~~(4)~~ (3) of  
17 this section, an insurer shall not acquire, directly or indirectly  
18 through an investment subsidiary, investments in obligations:

19 (a) ~~An insurer's investments in obligations having a~~  
20 ~~4 designation from the Securities Valuation Office shall not~~  
21 ~~exceed four percent of the insurer's admitted assets;~~ Having a 4  
22 designation from the Securities Valuation Office if, as a result of  
23 and giving effect to the investment, the aggregate amount of such  
24 investments would exceed four percent of the insurer's admitted  
25 assets;

1           (b) An insurer's investments in obligations having a 5  
2 designation from the Securities Valuation Office shall not exceed  
3 two percent of the insurer's admitted assets; and Having a 5  
4 designation from the Securities Valuation Office if, as a result  
5 of and giving effect to the investment, the aggregate amount of  
6 such investments would exceed two percent of the insurer's admitted  
7 assets; and

8           (c) An insurer's investments in obligations having a  
9 6 designation from the Securities Valuation Office shall not  
10 exceed one percent of the insurer's admitted assets. Having a 6  
11 designation from the Securities Valuation Office if, as a result  
12 of and giving effect to the investment, the aggregate amount of  
13 such investments would exceed one percent of the insurer's admitted  
14 assets.

15           ~~(3) Subject to the limitations in subsection (2) of this~~  
16 ~~section;~~

17           ~~(a) An insurer's investments in obligations having any~~  
18 ~~combination of 4, 5, and 6 designations from the Securities~~  
19 ~~Valuation Office, except the combination described in subdivision~~  
20 ~~(3)(b) of this section, in the aggregate, shall not exceed four~~  
21 ~~percent of the insurer's admitted assets; and~~

22           ~~(b) An insurer's investments in obligations having 5~~  
23 ~~and 6 designations from the Securities Valuation Office, in the~~  
24 ~~aggregate, shall not exceed two percent of the insurer's admitted~~  
25 ~~assets.~~



1           ~~(4) An insurer's investments authorized under this~~  
2 ~~section, in the aggregate, shall not exceed fifteen percent of its~~  
3 ~~admitted assets.~~

4           (3) An insurer shall not acquire, directly or indirectly  
5 through an investment subsidiary, investments under this section  
6 if, as a result of and giving effect to the investment, the  
7 aggregate amount would exceed fifteen percent of the insurer's  
8 admitted assets.

9           Sec. 20. Section 44-5153, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11           44-5153 (1) (a) (i) A life insurer may make investments  
12 not otherwise authorized under the Insurers Investment Act in an  
13 amount, in the aggregate, not exceeding the lesser of five percent  
14 of its admitted assets or one hundred percent of its policyholders  
15 surplus.

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

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

25           (2) (a) ~~Notwithstanding~~ In addition to the provisions of

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

5 (b) ~~Notwithstanding~~ In addition to the provisions of  
6 subdivisions (1)(a)(ii) and (b) of this section, an insurer other  
7 than a life insurer may make investments not otherwise authorized  
8 under the act in an amount not exceeding that portion of its  
9 policyholders surplus which is in excess of fifty percent of its  
10 annual net written premiums as shown by the most recent annual  
11 financial statement filed by the insurer pursuant to section  
12 44-322.

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

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

1 determination.

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

5 Sec. 21. Section 44-5501, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 44-5501 Sections 44-5501 to 44-5514 and section 24 of  
8 this act shall be known and may be cited as the Surplus Lines  
9 Insurance Act.

10 Sec. 22. Section 44-5502, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 44-5502 For purposes of the Surplus Lines Insurance Act:

13 (1) Department ~~shall mean~~ means the Department of  
14 Insurance;

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

16 (3) Insurer ~~shall have~~ has the same meaning as in section  
17 44-103; ~~and~~

18 (4) Foreign, alien, admitted, and nonadmitted, when  
19 referring to insurers, ~~shall have~~ has the same meanings as in  
20 section 44-103; ~~and~~ -

21 (5) Industrial insured means an insured that:

22 (a) Procures the insurance of any risk or risks  
23 other than sickness and accident insurance and life and annuity  
24 contracts, has fifty full-time employees, and has aggregate  
25 annual premiums for insurance on all risks other than workers'

1 compensation insurance that total at least one hundred thousand  
2 dollars; and

3 (b) Uses, to procure such insurance, the services of a  
4 salaried full-time employee who counsels or advises his or her  
5 employer regarding the insurance interests of the employer or the  
6 employer's subsidiaries or business affiliates, if the employee  
7 does not sell or solicit insurance or receive a commission.

8 Sec. 23. Section 44-5504, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 44-5504 (1) No person, other than an industrial insured,  
11 shall place, procure, or effect insurance upon any risk located in  
12 this state in any nonadmitted insurer until such person has first  
13 been issued a surplus lines license from the department as provided  
14 in section 44-5503.

15 (2) Application for a surplus lines license shall be  
16 made to the department on forms designated and furnished by the  
17 department and shall be accompanied by a license fee as established  
18 by the director not to exceed two hundred fifty dollars for each  
19 individual and corporate surplus lines license.

20 (3) (a) All corporate surplus lines licenses shall expire  
21 on April 30 of each year, and all individual surplus lines  
22 licenses shall expire on the licensee's birthday in the first year  
23 after issuance in which his or her age is divisible by two, and  
24 all individual surplus lines licenses may be renewed within the  
25 ninety-day period before their expiration dates and all individual

1 surplus lines licenses also may be renewed within the thirty-day  
2 period after their expiration dates upon payment of a late renewal  
3 fee as established by the director not to exceed two hundred  
4 dollars in addition to the applicable fee otherwise required for  
5 renewal of individual surplus lines licenses as established by the  
6 director pursuant to subsection (2) of this section. All individual  
7 surplus lines licenses renewed within the thirty-day period after  
8 their expiration dates pursuant to this subdivision shall be  
9 deemed to have been renewed before their expiration dates. The  
10 department shall establish procedures for the renewal of surplus  
11 lines licenses.

12 (b) Every licensee shall notify the department within  
13 thirty days of any changes in the licensee's residential or  
14 business address.

15 Sec. 24. Every industrial insured shall annually, on or  
16 before February 15, pay to the department a tax of three percent on  
17 the total gross amount of insurance premiums for policies procured  
18 through nonadmitted insurers. Every industrial insured shall pay  
19 the fire insurance tax prescribed in section 81-523. The department  
20 shall prescribe a form for an industrial insured tax filing.

21 Sec. 25. Section 44-7504, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 44-7504 For purposes of the Property and Casualty  
24 Insurance Rate and Form Act:

25 (1) Advisory organization means any entity, including its

1 affiliates or subsidiaries, which (a) has majority ownership or  
2 control by two or more insurers and assists two or more insurers  
3 in activities related to ratemaking, the promulgation of policy  
4 forms, or related matters or (b) makes the same prospective loss  
5 cost or policy form filings on behalf of or to be available for  
6 two or more insurers. For purposes of this subdivision, a group  
7 of insurers under common ownership or control shall be considered  
8 a single insurer. Advisory organization does not include joint  
9 reinsurance pools, joint underwriting pools, or insurers engaged in  
10 joint underwriting;

11 (2) Classification means the process of grouping insureds  
12 with similar loss or expense characteristics so that differences in  
13 losses and expenses may be recognized;

14 (3) Director means the Director of Insurance;

15 (4) Exempt commercial policyholder means an entity to  
16 which specific aspects of rate or policy form regulation do not  
17 apply or have been relaxed in accordance with rules and regulations  
18 adopted and promulgated pursuant to section 44-7515;

19 (5) Expense means that portion of a rate attributable  
20 to acquisition, field supervision, collection expense, general  
21 expense, taxes, licenses, and fees. Expense does not include loss  
22 adjustment expense;

23 (6) Experience rating plan means a rating formula  
24 and related procedures that use past loss experience of an  
25 individual policyholder to forecast future losses by measuring

1 the policyholder's loss experience against the expected losses  
2 for policyholders in that classification to produce a prospective  
3 premium credit, debit, or unity modification;

4 (7) Joint reinsurance pool means an ongoing voluntary  
5 arrangement pursuant to which two or more insurers participate in  
6 the reinsurance of risks written by one or more member insurers  
7 and reinsured by one or more other member insurers. For purposes  
8 of this subdivision, a group of insurers under common ownership or  
9 control shall be considered a single insurer. A joint reinsurance  
10 pool may operate through an association, syndicate, or other  
11 arrangement;

12 (8) Joint underwriting means a voluntary arrangement  
13 established on an individual risk basis by which two or more  
14 insurers jointly contract to provide coverage for an insured.  
15 For purposes of this subdivision, a group of insurers under  
16 common ownership or control shall be considered a single insurer.  
17 Joint underwriting does not include any arrangement by which  
18 the participants are reinsuring the direct obligation of another  
19 risk-assuming entity;

20 (9) Joint underwriting pool means an ongoing voluntary  
21 arrangement pursuant to which two or more insurers participate  
22 in the sharing of risks written as their direct obligations  
23 according to a predetermined basis and the insurance remains the  
24 direct obligation of the pool participants. For purposes of this  
25 subdivision, a group of insurers under common ownership or control

1 shall be considered a single insurer. A joint underwriting pool may  
2 operate through an association, syndicate, or other arrangement;

3 (10) Loss adjustment expense means the expense incurred  
4 by an insurer in the course of settling claims;

5 (11) Policy form means all policies, certificates, or  
6 other contracts providing insurance coverage. Policy form includes  
7 bonds and includes riders, endorsements, or other amendments to the  
8 policy form;

9 (12) Premium means the cost of insurance to the  
10 policyholder after all audit adjustments have been made and any  
11 dividends payable have been subtracted;

12 (13) Prospective loss cost means that portion of a  
13 rate intended to provide for expected losses and loss adjustment  
14 expenses. Prospective loss costs may provide for anticipated  
15 special assessments. Prospective loss costs do not include  
16 provisions for profits, dividends, or expenses other than loss  
17 adjustment expenses;

18 (14) Rating system means the information needed to  
19 determine the applicable rate or premium including rates, any  
20 manual or plan of rates, classifications, rating schedules, minimum  
21 premiums, policy fees, payment plans, rating plans or rules,  
22 anniversary rating date rules, and other similar information.  
23 Rating system does not include dividend rating plans or other  
24 provisions for the possible payment of dividends if such dividends  
25 are declared by the insurer's board of directors and are not



1 guaranteed;

2 (15) Special assessments means guaranty fund assessments  
3 made pursuant to section 44-2407, Workers' Compensation Trust Fund  
4 assessments made pursuant to section 48-162.02, residual market  
5 assessments made pursuant to section 44-7528 or ~~48-146.01~~, section  
6 3 of this act, and similar assessments. Special assessments are not  
7 expenses or losses;

8 (16) Statistical agent means an entity that, for the  
9 purpose of fulfilling the statistical reporting obligations of two  
10 or more insurers under the act, collects or compiles statistics  
11 from two or more insurers or provides reports developed from these  
12 statistics to the director. For purposes of this subdivision,  
13 a group of insurers under common ownership or control shall be  
14 considered a single insurer; and

15 (17) Supporting information means the experience and  
16 judgment of the filer and the experience or data of other  
17 insurers or advisory organizations relied upon by the filer,  
18 the interpretation of any other data relied upon by the filer,  
19 descriptions of methods used in developing a rating system, and any  
20 other information required by the director to be filed.

21 Sec. 26. Section 44-8101, Revised Statutes Cumulative  
22 Supplement, 2006, is amended to read:

23 44-8101 Sections 44-8101 to 44-8107 shall be known  
24 and may be cited as the Nebraska ~~Senior~~ Protection in Annuity  
25 Transactions Act.

1           Sec. 27. Section 44-8102, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           44-8102 The purpose of the Nebraska ~~Senior~~ Protection in  
4 Annuity Transactions Act is to set forth standards and procedures  
5 for recommendations made by insurance producers and insurers to  
6 ~~senior~~ consumers regarding annuity transactions so that ~~senior~~  
7 consumers' insurance needs and financial objectives at the time of  
8 the transaction are appropriately addressed.

9           Sec. 28. Section 44-8103, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11           44-8103 The Nebraska ~~Senior~~ Protection in Annuity  
12 Transactions Act applies to any recommendation to purchase or  
13 exchange an annuity made to a ~~senior~~ consumer by an insurance  
14 producer, or an insurer if an insurance producer is not involved,  
15 that results in the recommended purchase or exchange.

16           Sec. 29. Section 44-8104, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18           44-8104 Unless otherwise specifically included, the  
19 Nebraska ~~Senior~~ Protection in Annuity Transactions Act does not  
20 apply to recommendations involving:

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

24           (2) Contracts used to fund:

25           (a) An employee pension or welfare benefit plan that is

1 covered by the federal Employee Retirement Income Security Act of  
2 1974;

3 (b) A plan described by section 401(a), 401(k), 403(b),  
4 408(k), or 408(p) of the Internal Revenue Code if established or  
5 maintained by an employer;

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

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

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

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

18 Sec. 30. Section 44-8105, Revised Statutes Cumulative  
19 Supplement, 2006, is amended to read:

20 44-8105 For purposes of the Nebraska ~~Senior~~ Protection in  
21 Annuity Transactions Act:

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

25 (2) Insurer means a company required to be licensed under

1 the laws of this state to provide insurance products, including  
2 annuities;

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

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

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

14 Sec. 31. Section 44-8106, Revised Statutes Cumulative  
15 Supplement, 2006, is amended to read:

16 44-8106 (1) The insurance producer, or insurer if an  
17 insurance producer is not involved, shall have reasonable grounds  
18 to believe that the recommendation is suitable for the ~~senior~~  
19 consumer based on the facts disclosed by the ~~senior~~ consumer before  
20 making a recommendation to a ~~senior~~ consumer under the Nebraska  
21 ~~Senior~~ Protection in Annuity Transactions Act. The recommendation  
22 shall be based on the facts disclosed by the ~~senior~~ consumer  
23 relating to his or her investments, other insurance products, and  
24 the financial situation and needs of the ~~senior~~ consumer.

25 (2) Before the execution of a purchase or exchange of an

1 annuity resulting from a recommendation, an insurance producer, or  
2 an insurer if an insurance producer is not involved, shall make  
3 reasonable efforts to obtain information concerning:

4 (a) The ~~senior~~ consumer's financial status; i ~~including~~  
5 ~~investments held by the senior consumer;~~

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

8 ~~(c) (b) The senior consumer's tax status;~~

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

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

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

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

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

22 (iii) Fails to provide complete or accurate information.

23 (b) If a ~~senior~~ consumer provides information as  
24 described in subdivision (3) (a) of this section, an insurance  
25 producer or insurer shall make a recommendation that is reasonable

1 under all the circumstances that are actually known to the  
2 insurance producer or insurer at the time of the recommendation.

3 (4) (a) An insurer shall:

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

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

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

12 (i) Maintaining written procedures; and

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

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

22 (i) Maintaining written procedures; and

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

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

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

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

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

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

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

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

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

5           (i) Review all insurance producer solicited transactions;

6 or

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

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

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

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

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

22          (5) Compliance with the National Association of  
23 Securities Dealers Conduct Rules pertaining to suitability shall  
24 satisfy the requirements under this section for the recommendation  
25 of variable annuities. However, nothing in this subsection shall



1 limit the ability of the Director of Insurance to enforce the act.

2           Sec. 32. Section 44-8107, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4           44-8107 (1) The Director of Insurance may order:

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

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

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

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

20           (3) The director may reduce or eliminate any applicable  
21 penalty under section 44-1529 for a violation of subsection (1) or  
22 (2) of section 44-8106 or subdivision (3)(b) of such section if  
23 corrective action for the ~~senior~~ consumer was taken promptly after  
24 a violation was discovered.

25           Sec. 33. Section 48-144.03, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2           48-144.03 (1) Notwithstanding policy provisions that  
3 stipulate a workers' compensation insurance policy to be a contract  
4 with a fixed term of coverage that expires at the end of the  
5 term, coverage under a workers' compensation insurance policy  
6 shall continue in full force and effect until notice is given in  
7 accordance with this section.

8           (2) No cancellation of a workers' compensation insurance  
9 policy within the policy period shall be effective unless notice  
10 of the cancellation is given by the workers' compensation insurer  
11 to the Nebraska Workers' Compensation Court and to the employer.  
12 No such cancellation shall be effective until thirty days after  
13 the giving of such notices, except that the cancellation may  
14 be effective ten days after the giving of such notices if such  
15 cancellation is based on (a) notice from the employer to the  
16 insurer to cancel the policy, (b) nonpayment of premium due the  
17 insurer under any policy written by the insurer for the employer,  
18 (c) failure of the employer to reimburse deductible losses as  
19 required under any policy written by the insurer for the employer,  
20 or (d) failure of the employer, if covered pursuant to section  
21 ~~48-146.01~~, 3 of this act, to comply with sections 48-443 to 48-445.

22           (3) No workers' compensation insurance policy shall  
23 expire or lapse at the end of the policy period unless notice  
24 of nonrenewal is given by the workers' compensation insurer to the  
25 compensation court and to the employer. No workers' compensation

1 insurance policy shall expire or lapse until thirty days after the  
2 giving of such notices, except that a policy may expire or lapse  
3 ten days after the giving of such notices if the nonrenewal is  
4 based on (a) notice from the employer to the insurer to not renew  
5 the policy, (b) nonpayment of premium due the insurer under any  
6 policy written by the insurer for the employer, (c) failure of  
7 the employer to reimburse deductible losses as required under any  
8 policy written by the insurer for the employer, or (d) failure of  
9 the employer, if covered pursuant to section ~~48-146.01~~, 3 of this  
10 act, to comply with sections 48-443 to 48-445.

11 (4) Notwithstanding other provisions of this section, if  
12 the employer has secured workers' compensation insurance coverage  
13 with another workers' compensation insurer, then the cancellation  
14 or nonrenewal shall be effective as of the effective date of such  
15 other insurance coverage.

16 (5) The notices required by this section shall state the  
17 reason for the cancellation or nonrenewal of the policy.

18 (6) The notices required by this section shall be  
19 provided in writing and shall be deemed given upon the mailing  
20 of such notices by certified mail, except that notices from  
21 insurers to the compensation court may be provided by electronic  
22 means if such electronic means is approved by the administrator of  
23 the compensation court. If notice is provided by electronic means  
24 pursuant to such an approval, it shall be deemed given upon receipt  
25 by the compensation court.

1           Sec. 34. Section 48-446, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           48-446 (1) There is hereby created the Workplace Safety  
4 Consultation Program. It is the intent of the Legislature that such  
5 program help provide employees in Nebraska with safe and healthful  
6 workplaces.

7           (2) Under the Workplace Safety Consultation Program,  
8 the Department of Labor may conduct workplace inspections and  
9 consultations to determine whether employers are complying with  
10 standards issued by the federal Occupational Safety and Health  
11 Administration or the federal Mine Safety and Health Administration  
12 for safe and healthful workplaces. Workplace inspections and safety  
13 consultations shall be performed by employees of the Department  
14 of Labor who are knowledgeable and experienced in the occupational  
15 safety and health field and who are trained in the federal  
16 standards and in the recognition of safety and health hazards.  
17 The Department of Labor may employ qualified persons as may be  
18 necessary to carry out this section.

19           (3) All employers shall be subject to occupational  
20 safety and health inspections covering their Nebraska operations.  
21 Employers shall be selected by the Commissioner of Labor for  
22 inspection on the basis of factors intended to identify the  
23 likelihood of workplace injuries and to achieve the most efficient  
24 utilization of safety personnel of the Department of Labor. Such  
25 factors shall include:

1 (a) The amount of premium paid by the employer for  
2 workers' compensation insurance;

3 (b) The experience modification produced by the  
4 experience rating system referenced in section 44-7524;

5 (c) Whether the employer is covered by workers'  
6 compensation insurance under section ~~48-146.01~~, 3 of this act;

7 (d) The relative hazard of the employer's type of  
8 business as evidenced by insurance rates or loss costs filed with  
9 the Director of Insurance for the insurance rating classification  
10 or classifications applicable to the employer;

11 (e) The nature, type, or frequency of accidents for the  
12 employer as may be reported to the Department of Insurance, the  
13 Nebraska Workers' Compensation Court, or the Department of Labor;

14 (f) Workplace hazards as may be reported to the  
15 Department of Insurance, the Nebraska Workers' Compensation Court,  
16 or the Department of Labor;

17 (g) Previous safety and health history;

18 (h) Possible employee exposure to toxic substances;

19 (i) Requests by employers for the Department of Labor to  
20 inspect their workplaces or otherwise provide consulting services  
21 on a basis by which the employer will reimburse the Department of  
22 Labor; and

23 (j) All other relevant factors.

24 (4) Hazards identified by an inspection shall be  
25 eliminated within a reasonable time as specified by the

1 Commissioner of Labor.

2 (5) An employer who refuses to eliminate workplace  
3 hazards in compliance with an inspection shall be referred to  
4 the federal Occupational Safety and Health Administration or the  
5 federal Mine Safety and Health Administration for enforcement.

6 (6) At the discretion of the Commissioner of Labor,  
7 inspection of an employer may be repeated to ensure compliance by  
8 the employer, with the expenses incurred by the Department of Labor  
9 to be paid by the employer.

10 (7) The Commissioner of Labor shall adopt and promulgate  
11 rules and regulations establishing a schedule of fees for  
12 consultations and inspections. Such fees shall be established with  
13 due regard for the costs of administering the Workplace Safety  
14 Consultation Program. The cost of consultations and inspections  
15 shall be borne by each employer for which these services are  
16 rendered.

17 (8) There is hereby created the Workplace Safety  
18 Consultation Program Cash Fund. All fees collected pursuant to the  
19 Workplace Safety Consultation Program shall be remitted to the  
20 State Treasurer for credit to the fund and shall be used for the  
21 sole purpose of administering the program. Any money in the fund  
22 available for investment shall be invested by the state investment  
23 officer pursuant to the Nebraska Capital Expansion Act and the  
24 Nebraska State Funds Investment Act.

25 (9) Each employer provided a consultation or inspection

1 by the Department of Labor shall retain up-to-date records for  
2 each place of employment as recommended by the inspection or  
3 consultation. The employer shall make such records available to  
4 the Department of Labor upon request to ensure continued progress  
5 of the employer's efforts to comply with the federal Occupational  
6 Safety and Health Administration or the federal Mine Safety and  
7 Health Administration standards.

8 (10) Any person who knowingly operates or causes to be  
9 operated a business in violation of recommendations to correct  
10 serious or imminent hazards as identified by the Workplace Safety  
11 Consultation Program shall be referred to the federal Occupational  
12 Safety and Health Administration or the federal Mine Safety and  
13 Health Administration.

14 (11) The Attorney General, acting on behalf of the  
15 Commissioner of Labor, or the county attorney in a county in which  
16 a business is located or operated may apply to the district court  
17 for an order against any employer in violation of this section.

18 (12) The Workplace Safety Consultation Program shall not  
19 be construed to alter the duty of care or the liability of an  
20 owner or a business for injuries or death of any person or damage  
21 to any property. The state and its officers and employees shall  
22 not be construed to assume liability arising out of an accident  
23 involving a business by reason of administration of the Workplace  
24 Safety Consultation Program.

25 (13) Inspectors employed by the Department of Labor

1 may inspect any place of employment with or without notice  
2 during normal hours of operation. Such inspectors may suspend the  
3 operation of equipment determined to constitute an imminent danger  
4 situation. Operation of such equipment shall not resume until the  
5 hazardous or unsafe condition is corrected to the satisfaction of  
6 the inspector.

7           (14) No person with a reasonable cause to believe the  
8 truth of the information shall be subject to civil liability for  
9 libel, slander, or any other relevant tort cause of action by  
10 virtue of providing information without malice on workplace hazards  
11 or the nature, type, or frequency of accidents to the Department  
12 of Insurance, the Nebraska Workers' Compensation Court, or the  
13 Department of Labor.

14           (15) Safety and health inspectors employed by the  
15 Department of Labor shall have the right and power to enter  
16 any premise, building, or structure, public or private, for the  
17 purpose of inspecting any work area or equipment. A refusal by the  
18 employer of entry by a safety and health inspector employed by the  
19 Department of Labor shall be a violation of this subsection. If  
20 the Commissioner of Labor finds, after notice and hearing, that an  
21 employer has violated this subsection, he or she may order payment  
22 of a civil penalty of not more than one thousand dollars for  
23 each violation. Each day of continued violation shall constitute  
24 a separate violation.

25           (16) The Commissioner of Labor shall adopt and promulgate



1 rules and regulations to carry out this section.

2           Sec. 35. Sections 35 to 52 of this act shall be known and  
3 may be cited as the Captive Insurers Act.

4           Sec. 36. The purposes of the Captive Insurers Act are  
5 to set forth the procedures for organizing and regulating the  
6 operations of captive insurers within the State of Nebraska and to  
7 encourage integrity, financial solvency, and stability of captive  
8 insurers for the purpose of promoting the development of Nebraska  
9 businesses.

10           Sec. 37. For purposes of the Captive Insurers Act:

11           (1) Affiliated entity means any entity that directly or  
12 indirectly controls, is controlled by, or is under common control  
13 with a captive insurer;

14           (2) Captive insurer means a domestic insurer authorized  
15 under the act to provide insurance and reinsurance to its parent,  
16 any affiliated entity, or both. Such insurance and reinsurance  
17 shall be limited to the risks, hazards, and liabilities of its  
18 parent and affiliated entities;

19           (3) Control means the power to direct or cause the  
20 direction of the management and policies of an entity through  
21 ownership of voting securities;

22           (4) Director means the Director of Insurance; and

23           (5) Parent means an entity that directly or indirectly  
24 owns, controls, or holds, with power to vote, more than fifty  
25 percent of the outstanding voting securities or other ownership

1 interest of a captive insurer.

2           Sec. 38. No captive insurer shall adopt the name of any  
3 existing insurer or any name that may be misleading to the public.

4           Sec. 39. (1) No person shall transact the business  
5 of insurance as a captive insurer without first applying for  
6 and obtaining from the director a certificate of authority. An  
7 applicant shall submit a nonrefundable application fee of five  
8 hundred dollars with a plan of operation which includes:

9           (a) Articles of incorporation and bylaws or other  
10 documents of organization;

11           (b) Pro forma financial statements for two years;

12           (c) The source and nature of initial and ongoing capital;

13           (d) A feasibility study which discloses the types and  
14 adequacy of the insurance programs of the captive insurer, the  
15 identity of the parent and affiliated entities benefiting from such  
16 insurance program, and the relationships to the captive insurer as  
17 well as all projected expenses, contracts, and a holding company  
18 system chart identifying the ownership and relationship of the  
19 parent and affiliated entities;

20           (e) Copies of all insurance and reinsurance agreements  
21 of the captive insurer as well as disclosure of all transactions  
22 material to the insurance operations;

23           (f) Financial condition of the parent and, if requested  
24 by the director, any affiliated entities, benefiting from the  
25 captive insurance program;

1           (g) A management overview including competence,  
2 experience, and integrity of those controlling the insurance  
3 operations;

4           (h) A statement submitting to the jurisdiction of the  
5 director; and

6           (i) An explanation of how the operation of the captive  
7 insurer promotes the development of a Nebraska business.

8           (2) If the plan of operation is accepted and approved  
9 by the director, the articles and other documents of organization  
10 shall be filed in the office of the Secretary of State. A copy of  
11 the articles or other documents of organization, certified by the  
12 Secretary of State, shall be filed with the director. Amendments  
13 to organizational documents shall be deemed a change to the plan  
14 of operation and shall be filed with and approved by the director  
15 before they are submitted to the Secretary of State.

16           (3) The director may refuse to issue a certificate of  
17 authority until he or she is reasonably satisfied that the plan of  
18 operation contains sufficient indication of a successful insurance  
19 operation and that the captive insurer will be able to meet  
20 expected or ongoing policy obligations.

21           (4) A captive insurer shall obtain prior written approval  
22 of any subsequent amendments to any components of the original plan  
23 of operation. The director shall deem that any captive insurer that  
24 has failed to disclose a transaction or a series of transactions  
25 that would circumvent the Captive Insurers Act to be in hazardous

1 financial condition with respect to the public or its policyholders  
2 and subject to suspension or revocation of the certificate of  
3 authority of the captive insurer.

4 (5) Except as otherwise authorized in section 50 of  
5 this act, a captive insurer may only transact any line or lines  
6 of insurance specified in subdivisions (5), (7), (8), (9), (10),  
7 and (18) of section 44-201. A captive insurer shall not transact  
8 directors and officers insurance.

9 (6) Every captive insurer shall provide to the director  
10 books and records in the state as to enable the financial  
11 examination of the captive insurer by the director.

12 Sec. 40. A board of directors or other governing body  
13 consisting of not less than three individuals shall manage the  
14 business of each captive insurer. The organizational documents or  
15 bylaws shall provide for the terms, meetings, and elections of the  
16 directors and officers of the governing body. No individual may  
17 serve as a director or officer who has been convicted of fraud  
18 involving any financial institution or of a felony involving misuse  
19 of funds.

20 Sec. 41. The certificate of authority issued to a captive  
21 insurer shall expire on June 30 of each year. The director shall  
22 renew the certificate of authority upon payment of an annual  
23 renewal fee of five hundred dollars and all other required fees and  
24 the filing of all required reports.

25 Sec. 42. (1) Every captive insurer with a certificate

1 of authority to transact business in this state pursuant to the  
2 Captive Insurers Act shall file with the director a report, signed  
3 and sworn to by its chief officers, of its financial condition as  
4 of the end of each fiscal year. The report shall be in a form  
5 prescribed by the director and contain such information as the  
6 director deems necessary for the purpose of ascertaining whether  
7 the captive insurer can continue to meet its policy obligations to  
8 its parent, affiliated entities, and claimants. The report shall be  
9 filed within sixty days following the end of the captive insurer's  
10 fiscal year. The director may require that the report include the  
11 information required by section 44-322, including any instructions,  
12 procedures, and guidelines consistent with the act.

13 (2) The director may prescribe the format and frequency  
14 of other reports to be filed, which may include, but not be  
15 limited to, summary loss reports, quarterly financial statements,  
16 audited annual financial statements, holding company statements,  
17 biographical information on officers and directors, and other  
18 professional reports.

19 Sec. 43. (1) No captive insurer shall be permitted to  
20 transact any business in this state unless it maintains total  
21 capital and surplus in the amount of at least one hundred thousand  
22 dollars in such form as is acceptable to the director.

23 (2) Upon a written finding by the director that the  
24 approved plan of operation or the operational results of the  
25 captive insurer require either additional capital or a larger

1 surplus than required by this section, the director may require  
2 that additional capital or surplus, or both, be obtained.  
3 Additional capital or surplus may be tendered in the form of an  
4 irrevocable evergreen letter of credit acceptable to the director.

5 (3) Any letter of credit provided to satisfy the  
6 requirements of the Captive Insurers Act shall be:

7 (a) Jointly held under the control of the director and  
8 the captive insurer for the benefit of claimants;

9 (b) Issued or confirmed by an institution that is insured  
10 by the Federal Deposit Insurance Corporation;

11 (c) The sole property of such captive insurer; and

12 (d) Free and clear of any claim or encumbrance.

13 Sec. 44. The director may examine the financial  
14 condition, affairs, and management of any applicant or captive  
15 insurer pursuant to the Insurers Examination Act.

16 Sec. 45. (1) Captive insurers shall be subject to the  
17 types and nature of investments as set forth in the Insurers  
18 Investment Act, but not subject to any limitations contained in  
19 such act as to invested amounts, except that the director may  
20 prohibit or limit any investment that threatens the solvency or  
21 liquidity of any such captive insurer or if such investments are  
22 not made in accordance with the approved plan of operation.

23 (2) No captive insurer may make a loan to or an  
24 investment in its parent or affiliated entities without prior  
25 written approval of the director and any such transaction shall

1 be evidenced by documentation approved by the director. Loans of  
2 minimum capital and surplus funds are prohibited.

3           Sec. 46. (1) Except as otherwise provided in subsection  
4 (2) of this section, any captive insurer authorized to do business  
5 in this state may take credit for reserves on risks ceded to  
6 a reinsurer pursuant to the provisions of sections 44-416.05 to  
7 44-416.10 and any rules and regulations adopted and promulgated  
8 under such sections.

9           (2) Notwithstanding the provisions of subsection (1) of  
10 this section, any captive insurer may cede risks to a reinsurer not  
11 meeting the standards of sections 44-416.05 to 44-416.10 and may  
12 take reserve credits if the captive insurer receives prior written  
13 approval from the director.

14           Sec. 47. A captive insurer shall not be a member of the  
15 Nebraska Property and Liability Insurance Guaranty Association or  
16 the Nebraska Life and Health Insurance Guaranty Association. The  
17 Nebraska Property and Liability Insurance Guaranty Association Act  
18 and the Nebraska Life and Health Insurance Guaranty Association Act  
19 shall not be applicable to coverage offered by a captive insurer.

20           Sec. 48. The director shall approve any voluntary  
21 dissolution of a captive insurer if the director determines that  
22 all obligations of the captive insurer have been satisfied. The  
23 dissolution of a captive insurer shall not impair the right of any  
24 person to commence an action against the captive insurer for any  
25 liability previously incurred.

1           Sec. 49. (1) After notice and a hearing conducted  
2 pursuant to the Administrative Procedure Act, the director may  
3 suspend or revoke a certificate of authority or may impose  
4 an administrative fine not to exceed one thousand dollars per  
5 violation, or any combination of such actions, if the director  
6 finds the captive insurer:

7           (a) Engages in financial practices that make further  
8 transaction of business in this state hazardous or injurious to  
9 claimants or the public as defined by rule and regulation adopted  
10 and promulgated by the director;

11           (b) Within fifteen business days fails to respond to an  
12 inquiry of the director;

13           (c) Fails to pay any final judgment rendered against it  
14 in this state on any contractual obligation in a reasonable period  
15 of time;

16           (d) Conducts business fraudulently or has not met its  
17 contractual obligations in good faith; or

18           (e) Violates any provision of the laws of this or any  
19 other state.

20           (2) In lieu of or in addition to the administrative fines  
21 set forth in subsection (1) of this section, the director may  
22 issue a cease and desist order to a captive insurer if the captive  
23 insurer engages in any of the activities set forth in subsection  
24 (1) of this section.

25           Sec. 50. (1) This section provides for the creation of



1 special purpose financial captive insurers to diversify and broaden  
2 insurers' access to sources of capital.

3 (2) For purposes of this section:

4 (a) Counterparty means a special purpose financial  
5 captive insurer's parent or affiliated entity, which is an insurer  
6 domiciled in Nebraska that cedes life insurance risks to the  
7 special purpose financial captive insurer pursuant to the special  
8 purpose financial captive insurer contract;

9 (b) Insolvency or insolvent means that the special  
10 purpose financial captive insurer is unable to pay its obligations  
11 when they are due, unless those obligations are the subject of a  
12 bona fide dispute;

13 (c) Insurance securitization means a package of  
14 related risk transfer instruments, capital market offerings, and  
15 facilitating administrative agreements, under which a special  
16 purpose financial captive insurer obtains proceeds either directly  
17 or indirectly through the issuance of securities, and may hold  
18 the proceeds in trust to secure the obligations of the special  
19 purpose financial captive insurer under one or more special purpose  
20 financial captive insurer contracts, in that the investment risk to  
21 the holders of the securities is contingent upon the obligations of  
22 the special purpose financial captive insurer to the counterparty  
23 under the special purpose financial captive insurer contract in  
24 accordance with the transaction terms and pursuant to the Captive  
25 Insurers Act;

1           (d) Organizational document means the special purpose  
2 financial captive insurer's articles of incorporation, articles of  
3 organization, bylaws, operating agreement, or other foundational  
4 documents that establish the special purpose financial captive  
5 insurer as a legal entity or prescribes its existence;

6           (e) Permitted investments means those investments that  
7 meet the qualifications set forth in section 45 of this act;

8           (f) Securities means debt obligations, equity  
9 investments, surplus certificates, surplus notes, funding  
10 agreements, derivatives, and other legal forms of financial  
11 instruments;

12           (g) Special purpose financial captive insurer means a  
13 captive insurer which has received a certificate of authority from  
14 the director for the limited purposes provided for in this section;

15           (h) Special purpose financial captive insurer contract  
16 means a contract between the special purpose financial captive  
17 insurer and the counterparty pursuant to which the special  
18 purpose financial captive insurer agrees to provide insurance  
19 or reinsurance protection to the counterparty for risks associated  
20 with the counterparty's insurance or reinsurance business; and

21           (i) Special purpose financial captive insurer securities  
22 means the securities issued by a special purpose financial captive  
23 insurer.

24           (3) (a) The provisions of the Captive Insurers Act, other  
25 than those in subdivision (3) (b) of this section, apply to a

1 special purpose financial captive insurer. If a conflict occurs  
2 between a provision of the act not in this section and a provision  
3 of this section, the latter controls.

4 (b) The requirements of this section shall not apply to  
5 specific special purpose financial captive insurers if the director  
6 finds a specific requirement is inappropriate due to the nature of  
7 the risks to be insured by the special purpose financial captive  
8 insurer and if the special purpose financial captive insurer  
9 meets criteria established by rules and regulations adopted and  
10 promulgated by the director.

11 (4) A special purpose financial captive insurer may be  
12 established as a stock corporation, limited liability company,  
13 partnership, or other form of organization approved by the  
14 director.

15 (5)(a) A special purpose financial captive insurer may  
16 not issue a contract for assumption of risk or indemnification  
17 of loss other than a special purpose financial captive insurer  
18 contract. However, the special purpose financial captive insurer  
19 may cede risks assumed through a special purpose financial captive  
20 insurer contract to third-party reinsurers through the purchase of  
21 reinsurance or retrocession protection if approved by the director.

22 (b) A special purpose financial captive insurer may enter  
23 into contracts and conduct other commercial activities related  
24 or incidental to and necessary to fulfill the purposes of the  
25 special purpose financial captive insurer contract, insurance

1 securitization, and this section. Those activities may include,  
2 but are not limited to: Entering into special purpose financial  
3 captive insurer contracts; issuing securities of the special  
4 purpose financial captive insurer in accordance with applicable  
5 securities law; complying with the terms of these contracts  
6 or securities; entering into trust, swap, tax, administration,  
7 reimbursement, or fiscal agent transactions; or complying with  
8 trust indenture, reinsurance, retrocession, and other agreements  
9 necessary or incidental to effectuate an insurance securitization  
10 in compliance with this section and in the plan of operation  
11 approved by the director.

12 (6) (a) A special purpose financial captive insurer may  
13 issue securities, subject to and in accordance with applicable law,  
14 its approved plan of operation, and its organization documents.

15 (b) A special purpose financial captive insurer, in  
16 connection with the issuance of securities, may enter into and  
17 perform all of its obligations under any required contracts to  
18 facilitate the issuance of these securities.

19 (c) The obligation to repay principal or interest, or  
20 both, on the securities issued by the special purpose financial  
21 captive insurer shall be designed to reflect the risk associated  
22 with the obligations of the special purpose financial captive  
23 insurer to the counterparty under the special purpose financial  
24 captive insurer contract.

25 (7) A special purpose financial captive insurer may

1 enter into swap agreements, or other forms of asset management  
2 agreements, including guaranteed investment contracts, or other  
3 transactions that have the objective of leveling timing differences  
4 in funding of up-front or ongoing transaction expenses or managing  
5 asset, credit, prepayment, or interest rate risk of the investments  
6 in the trust to ensure that the investments are sufficient to  
7 assure payment or repayment of the securities, and related interest  
8 or principal payments, issued pursuant to a special purpose  
9 financial captive insurer insurance securitization transaction or  
10 the obligations of the special purpose financial captive insurer  
11 under the special purpose financial captive insurer contract or for  
12 any other purpose approved by the director. All asset management  
13 agreements entered into by the special purpose financial captive  
14 insurer must be approved by the director.

15 (8)(a) A special purpose financial captive insurer, at  
16 any given time, may enter into and effectuate a special purpose  
17 financial captive insurer contract with a counterparty if the  
18 special purpose financial captive insurer contract obligates  
19 the special purpose financial captive insurer to indemnify the  
20 counterparty for losses and contingent obligations of the special  
21 purpose financial captive insurer under the special purpose  
22 financial captive insurer contract are securitized through a  
23 special purpose financial captive insurer insurance securitization,  
24 which security for such obligations may be funded and secured with  
25 assets held in trust for the benefit of the counterparty pursuant

1 to agreements contemplated by this section and invested in a manner  
2 that meet the criteria as provided in section 45 of this act.

3 (b) A special purpose financial captive insurer may  
4 enter into agreements with affiliated companies and third parties  
5 and conduct business necessary to fulfill its obligations and  
6 administrative duties incidental to the insurance securitization  
7 and the special purpose financial captive insurer contract. The  
8 agreements may include management and administrative services  
9 agreements and other allocation and cost sharing agreements, or  
10 swap and asset management agreements, or both, or agreements for  
11 other contemplated types of transactions provided in this section.

12 (c) A special purpose financial captive insurer contract  
13 must contain provisions that:

14 (i) Require the special purpose financial captive insurer  
15 to either (A) enter into a trust agreement specifying what  
16 recoverables or reserves, or both, the agreement is to cover and to  
17 establish a trust account for the benefit of the counterparty and  
18 the security holders or (B) establish such other method of security  
19 acceptable to the director;

20 (ii) Stipulate that assets deposited in the trust account  
21 must be valued in accordance with their current fair market value  
22 and must consist only of permitted investments;

23 (iii) If a trust arrangement is used, require the special  
24 purpose financial captive insurer, before depositing assets with  
25 the trustee, to execute assignments, to execute endorsements in

1 blank, or to take such actions as are necessary to transfer  
2 legal title to the trustee of all shares, obligations, or other  
3 assets requiring assignments, in order that the counterparty, or  
4 the trustee upon the direction of the counterparty, may negotiate  
5 whenever necessary the assets without consent or signature from the  
6 special purpose financial captive insurer or another entity; and

7 (iv) If a trust arrangement is used, stipulate that the  
8 special purpose financial captive insurer and the counterparty  
9 agree that the assets in the trust account, established pursuant  
10 to the provisions of the special purpose financial captive insurer  
11 contract, may be withdrawn by the counterparty, or the trustee on  
12 its behalf, at any time, only in accordance with the terms of  
13 the special purpose financial captive insurer contract, and must  
14 be utilized and applied by the counterparty or any successor of  
15 the counterparty by operation of law, including, subject to the  
16 provisions of this section, but without further limitation, any  
17 liquidator, rehabilitator, or receiver of the counterparty, without  
18 diminution because of insolvency on the part of the counterparty  
19 or the special purpose financial captive insurer, only for the  
20 purposes set forth in the credit for reinsurance laws and rules and  
21 regulations of this state.

22 (d) The special purpose financial captive insurer  
23 contract may contain provisions that give the special purpose  
24 financial captive insurer the right to seek approval from the  
25 counterparty to withdraw from the trust all or part of the assets,

1 or income from them, contained in the trust and to transfer the  
2 assets to the special purpose financial captive insurer if such  
3 provisions comply with the credit for reinsurance laws and rules  
4 and regulations of this state.

5 (9) A special purpose financial captive insurer contract  
6 meeting the provisions of this section must be granted credit  
7 for reinsurance treatment or otherwise qualify as an asset or  
8 a reduction from liability for reinsurance ceded by a domestic  
9 insurer to a special purpose financial captive insurer as an  
10 assuming insurer for the benefit of the counterparty if and only to  
11 the extent:

12 (a) Of the value of the assets held in trust for, or  
13 clean, irrevocable, unconditional letters of credit, issued or  
14 confirmed by a qualified United States financial institution as  
15 defined in section 44-416.08, or as approved by the director, for  
16 the benefit of the counterparty under the special purpose financial  
17 captive insurer contract; and

18 (b) The assets are held or invested in one or more of the  
19 forms allowed in section 45 of this act.

20 (10) (a) (i) Notwithstanding the provisions of the Nebraska  
21 Insurers Supervision, Rehabilitation, and Liquidation Act, the  
22 director may apply to the district court of Lancaster County for  
23 an order authorizing the director to rehabilitate or liquidate a  
24 special purpose financial captive insurer domiciled in this state  
25 on one or more of the following grounds:



1           (A) There has been embezzlement, wrongful sequestration,  
2 dissipation, or diversion of the assets of the special purpose  
3 financial captive insurer intended to be used to pay amounts owed  
4 to the counterparty or the holders of special purpose financial  
5 captive insurer securities; or

6           (B) The special purpose financial captive insurer is  
7 insolvent and the holders of a majority in outstanding principal  
8 amount of each class of special purpose financial captive insurer  
9 securities request or consent to conservation, rehabilitation, or  
10 liquidation pursuant to the provisions of this section.

11           (ii) The court may not grant relief provided by  
12 subdivision (10)(a)(i) of this section unless, after notice and a  
13 hearing, the director establishes that relief must be granted.

14           (b) Notwithstanding any other applicable law, rule, or  
15 regulation, upon any order of rehabilitation or liquidation of  
16 a special purpose financial captive insurer, the receiver shall  
17 manage the assets and liabilities of the special purpose financial  
18 captive insurer pursuant to the provisions of subsection (11) of  
19 this section.

20           (c) With respect to amounts recoverable under a special  
21 purpose financial captive insurer contract, the amount recoverable  
22 by the receiver must not be reduced or diminished as a result  
23 of the entry of an order of conservation, rehabilitation, or  
24 liquidation with respect to the counterparty, notwithstanding  
25 another provision in the contracts or other documentation

1 governing the special purpose financial captive insurer insurance  
2 securitization.

3 (d) An application or petition, or a temporary  
4 restraining order or injunction issued pursuant to the provisions  
5 of the Nebraska Insurers Supervision, Rehabilitation, and  
6 Liquidation Act, with respect to a counterparty does not prohibit  
7 the transaction of a business by a special purpose financial  
8 captive insurer, including any payment by a special purpose  
9 financial captive insurer made pursuant to a special purpose  
10 financial captive insurer security, or any action or proceeding  
11 against a special purpose financial captive insurer or its assets.

12 (e) Notwithstanding the provisions of any applicable law  
13 or rule or regulation, the commencement of a summary proceeding  
14 or other interim proceeding commenced before a formal delinquency  
15 proceeding with respect to a special purpose financial captive  
16 insurer, and any order issued by the court, does not prohibit  
17 the payment by a special purpose financial captive insurer made  
18 pursuant to a special purpose financial captive insurer security or  
19 special purpose financial captive insurer contract or the special  
20 purpose financial captive insurer from taking any action required  
21 to make the payment.

22 (f) Notwithstanding the provisions of any other  
23 applicable law, rule, or regulation:

24 (i) A receiver of a counterparty may not void a  
25 nonfraudulent transfer by a counterparty to a special purpose

1 financial captive insurer of money or other property made pursuant  
2 to a special purpose financial captive insurer contract; and

3 (ii) A receiver of a special purpose financial captive  
4 insurer may not void a nonfraudulent transfer by the special  
5 purpose financial captive insurer of money or other property made  
6 to a counterparty pursuant to a special purpose financial captive  
7 insurer contract or made to or for the benefit of any holder of  
8 a special purpose financial captive insurer security on account of  
9 the special purpose financial captive insurer security.

10 (g) With the exception of the fulfillment of the  
11 obligations under a special purpose financial captive insurer  
12 contract, and notwithstanding the provisions of any other  
13 applicable law or rule or regulation, the assets of a special  
14 purpose financial captive insurer, including assets held in trust,  
15 must not be consolidated with or included in the estate of a  
16 counterparty in any delinquency proceeding against the counterparty  
17 pursuant to the provisions of this section for any purpose  
18 including, without limitation, distribution to creditors of the  
19 counterparty.

20 (11) A special purpose financial captive insurer may  
21 not declare or pay dividends in any form to its owners other  
22 than in accordance with the insurance securitization transaction  
23 agreements, and in no instance shall the dividends decrease the  
24 capital of the special purpose financial captive insurer below  
25 two hundred fifty thousand dollars, and, after giving effect to

1 the dividends, the assets of the special purpose financial captive  
2 insurer, including any assets held in trust pursuant to the terms  
3 of the insurance securitization, must be sufficient to satisfy  
4 the director that it can meet its obligations. Approval by the  
5 director of an ongoing plan for the payment of dividends, interest  
6 on securities, or other distribution by a special purpose financial  
7 captive insurer must be conditioned upon the retention, at the time  
8 of each payment, of capital or surplus equal to or in excess of  
9 amounts specified by, or determined in accordance with formulas  
10 approved for the special purpose financial captive insurer by, the  
11 director.

12 (12) Information submitted pursuant to the provisions  
13 of this section shall be given confidential treatment, shall not  
14 be subject to subpoena, and shall not be made public by the  
15 director or any other person, except to other state, federal,  
16 foreign, and international regulatory and law enforcement agencies  
17 if the recipient agrees in writing to maintain the confidentiality  
18 of the information, without the prior written consent of the  
19 special purpose financial captive insurer unless the director,  
20 after giving the special purpose financial captive insurer notice  
21 and opportunity to be heard, determines that the best interest of  
22 policyholders, shareholders, or the public will be served by the  
23 publication thereof, in which event he or she may publish all or  
24 any part thereof in such manner as he or she may deem appropriate.

25 Sec. 51. The director may adopt and promulgate rules and

1 regulations to carry out the Captive Insurers Act.

2           Sec. 52. (1) The insurance laws of this state shall  
3 not apply to captive insurers except as permitted in the Captive  
4 Insurers Act.

5           (2) The following provisions of Chapter 44 apply to  
6 captive insurers:

7           (a) The Insurers Examination Act;

8           (b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114,  
9 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326,  
10 and 44-360; and

11           (c) The Nebraska Insurers Supervision, Rehabilitation,  
12 and Liquidation Act. Such act shall only apply to a captive insurer  
13 that provides insurance and reinsurance to a parent or affiliated  
14 entity that is an insurer.

15           Sec. 53. Section 77-908, Revised Statutes Cumulative  
16 Supplement, 2006, is amended to read:

17           77-908 Every insurance company organized under the stock,  
18 mutual, assessment, or reciprocal plan, except fraternal benefit  
19 societies, which is transacting business in this state shall, on  
20 or before March 1 of each year, pay a tax to the director of one  
21 percent of the gross amount of direct writing premiums received by  
22 it during the preceding calendar year for business done in this  
23 state, except that (1) for group sickness and accident insurance  
24 the rate of such tax shall be five-tenths of one percent, (2) for  
25 property and casualty insurance, excluding individual sickness and

1 accident insurance, the rate of such tax shall be one percent,  
2 and (3) for capitation payments made in accordance with the  
3 Medical Assistance Act, the rate of tax shall be five percent. A  
4 captive insurer authorized under the Captive Insurers Act that is  
5 transacting business in this state shall, on or before March 1 of  
6 each year, pay to the director a tax of one-fourth of one percent  
7 of the gross amount of direct writing premiums received by such  
8 insurer during the preceding calendar year for business transacted  
9 in the state. The taxable premiums shall include premiums paid on  
10 the lives of persons residing in this state and premiums paid for  
11 risks located in this state whether the insurance was written in  
12 this state or not, including that portion of a group premium paid  
13 which represents the premium for insurance on Nebraska residents  
14 or risks located in Nebraska included within the group when the  
15 number of lives in the group exceeds five hundred. The tax shall  
16 also apply to premiums received by domestic companies for insurance  
17 written on individuals residing outside this state or risks located  
18 outside this state if no comparable tax is paid by the direct  
19 writing domestic company to any other appropriate taxing authority.  
20 Companies whose scheme of operation contemplates the return of a  
21 portion of premiums to policyholders, without such policyholders  
22 being claimants under the terms of their policies, may deduct  
23 such return premiums or dividends from their gross premiums for  
24 the purpose of tax calculations. Any such insurance company shall  
25 receive a credit on the tax imposed as provided in the Community

1 Development Assistance Act and section 77-27,222.

2           Sec. 54. The Revisor of Statutes shall assign section 3  
3 of this act to Chapter 44, article 3.

4           Sec. 55. Original sections 21-2005, 44-319.07, 44-501,  
5 44-507, 44-508, 44-522, 44-1104, 44-4501, 44-4519, 44-5110,  
6 44-5111, 44-5120, 44-5137, 44-5140, 44-5141, 44-5152, 44-5501,  
7 44-5502, 44-5504, 44-7504, and 48-446, Reissue Revised Statutes of  
8 Nebraska, and sections 44-5103, 44-5153, 44-8101, 44-8102, 44-8103,  
9 44-8104, 44-8105, 44-8106, 44-8107, 48-144.03, 48-146.01, and  
10 77-908, Revised Statutes Cumulative Supplement, 2006, are repealed.