

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 117

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, 44-4501,
3 44-4519, 44-5501, 44-5502, 44-5504, 44-7504, and 48-446,
4 Reissue Revised Statutes of Nebraska, and sections 48-144.03
5 and 48-146.01, Revised Statutes Cumulative Supplement, 2006;
6 to change provisions relating to the Business Corporation
7 Act, the Long-Term Care Insurance Act, the Surplus Lines
8 Insurance Act, securities, workers' compensation insurance,
9 fire insurance policies, standard provisions and forms, the
10 Viatical Settlements Act, and nonadmitted insurers; to
11 provide training requirements for long-term care insurance
12 providers; to provide for a tax on premiums of policies
13 procured by industrial insureds; to define terms; to provide
14 powers and duties; to harmonize provisions; to provide a
15 duty for the Revisor of Statutes; and to repeal the original
16 sections.

17 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 shall
9 be \$60;

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

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

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

16 (v) If the capital stock is more than \$75,000 but does not
17 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 a
22 corporation organized under the laws of any other state that
23 domesticates in this state, and which stock does not have a par value,
24 shall be deemed to have a par value of an amount per share equal to
25 the amount paid in as capital for each of such shares as are then
26 issued and outstanding, and in no event less than one dollar per
27 share.

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

5 ~~(b)~~ (c) Application for use of indistinguishable
 6 name...\$25

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

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

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

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

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

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

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

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

17 ~~(k)~~ (l) Restatement of articles of incorporation...\$25
 18 with amendment of articles...\$25

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

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

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

22 ~~(o)~~ (p) Certificate of administrative dissolution...No
 23 fee

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

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

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

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

1 ~~(t)~~ (u) Application for amended certificate of
2 authority...\$25

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

4 ~~(v)~~ (w) Certificate of revocation of authority to
5 transact business...No fee

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

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

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

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

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

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

18 (b) Ten dollars for the certificate.

19 (4) All fees set forth in this section shall be collected by
20 the Secretary of State and remitted to the State Treasurer and
21 credited two-thirds to the General Fund and one-third to the
22 Corporation Cash Fund.

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

25 44-319.07. (1) The depositing insurer or assessment
26 association may, from time to time, exchange for the deposited
27 securities, or any of them, other securities eligible for deposit if

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

13 (2) If the depositing insurer or assessment association
14 fails to comply with the requirements of subsection (1) of this
15 section or the rules and regulations adopted and promulgated pursuant
16 to section 44-319.11, such insurer or assessment association shall
17 forfeit five hundred dollars for each such failure. The director
18 shall collect and remit the forfeitures to the State Treasurer for
19 distribution in accordance with Article VII, section 5, of the
20 Constitution of Nebraska.

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

23 ~~48-146.01.~~ (1) For purposes of this section:

24 (a) Assigned risk employer means a Nebraska employer that is
25 in good faith entitled to, but is unable to obtain, workers'
26 compensation insurance through ordinary methods; and ~~Assigned~~
27 ~~risk employer does not include an employer who is in default on~~

1 ~~workers' compensation premiums, who has failed to reimburse an~~
2 ~~insurer for amounts to be repaid pursuant to workers' compensation~~
3 ~~insurance written on a policy with a deductible, who has failed to~~
4 ~~provide an insurer reasonable access to books and records necessary~~
5 ~~for a premium audit, or who has defrauded or attempted to defraud an~~
6 ~~insurer; and~~

7 (b) Director means the Director of Insurance.

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

15 ~~(b)~~ (2)(a) The director shall enter into an agreement
16 with one or more workers' compensation insurers to provide workers'
17 compensation insurance to assigned risk employers. In selecting an
18 insurer to become an assigned risk insurer, the director shall
19 consider the cost of coverage to assigned risk employers, the loss
20 control and claims handling services available from the workers'
21 compensation insurer, the financial condition of the workers'
22 compensation insurer, and any other relevant factors. An agreement
23 entered into under this subsection may not exceed five years.

24 ~~(e)~~ (b) If the director determines that the cost of
25 workers' compensation insurance premiums for an insurer to provide
26 assigned risk coverage pursuant to such an agreement would be
27 unreasonably high, the director may enter into an agreement in which

1 the assigned risk insurer covers a portion of the losses incurred by
2 the assigned risk employer. Any agreement that involves an average
3 rate level of less than two and one-half times the prospective loss
4 costs approved for an advisory organization pursuant to section
5 44-7511 shall not be considered unreasonably high for the purposes of
6 this section. Pursuant to any such agreement, remaining losses shall
7 be assessed against all workers' compensation insurers writing
8 workers' compensation insurance in this state and risk management
9 pools created under the Intergovernmental Risk Management Act based on
10 their workers' compensation premiums written in this state or
11 contributions made to risk management pools. Assigned risk premiums
12 shall be excluded from the basis for such assessments.

13 (c) If the assigned risk system described in subdivisions
14 (2)(a) and (b) of this section ceases to be viable because no
15 qualified insurer is willing to provide workers' compensation
16 coverage at an average rate level of two and one-half times the
17 prospective loss costs approved for an advisory organization pursuant
18 to section 44-7511 without also requiring substantial sharing of
19 losses with all other workers' compensation insurers writing workers'
20 compensation insurance in this state and risk management pools
21 created under the Intergovernmental Risk Management Act, then the
22 director may, after consultation with insurers authorized to issue
23 workers' compensation insurance policies in this state, create a
24 reasonable alternative assigned risk system involving the sharing of
25 premiums and losses for assigned risk employers among all such
26 workers' compensation insurers writing workers' compensation
27 insurance in this state and such risk management pools. If

1 established, such alternative assigned risk system shall not utilize
2 an average rate level of less than two and one-half times the
3 prospective loss costs approved for an advisory organization pursuant
4 to section 44-7511.

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

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

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

14 (b) The employer is in default on workers' compensation
15 premiums;

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

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

21 (e) The employer has defrauded or attempted to defraud an
22 insurer; or

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

27 Sec. 4. Section 44-501, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-501. No policy or contract of fire and lightning
3 insurance, including a renewal thereof, shall be made, issued, used,
4 or delivered by any insurer or by any insurance producer or
5 representative of an insurer on property within this state other than
6 such as shall conform as nearly as practicable to blanks, size of
7 type, context, provisions, agreements, and conditions with the 1943
8 Standard Fire Insurance Policy of the State of New York, a copy of
9 which shall be filed in the office of the Director of Insurance as
10 standard policy for this state, and no other or different provision,
11 agreement, condition, or clause shall in any manner be made a part of
12 such contract or policy or be endorsed thereon or delivered therewith
13 except as provided in subdivisions (1) through (11) of this section.

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

23 In lieu of the facsimile signatures of the president and
24 secretary of the insurer on such policy, there may appear the
25 signature or signatures of such persons as are duly authorized by the
26 insurer to execute the contract. No such policy shall be void if the
27 facsimile signature or signatures of any officer of the company shall

1 not correspond with the actual persons who are such officers at the
2 inception of the contract if such policy is countersigned by a duly
3 authorized agent of the insurer.

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

24 (3) A company, corporation, or association organized or
25 incorporated under and in pursuance of the laws of this state or
26 elsewhere, if entitled to do business in this state, may with the
27 approval of the Director of Insurance, if the same is not already

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

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

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

25 (6) This section shall not apply to motor vehicle, inland
26 marine, or ocean marine insurance, reinsurance contracts between
27 insurance companies, or insurance that does not cover risks of a

1 personal nature. ~~The Director of Insurance may approve~~ An insurer
2 may file with the director, pursuant to the Property and Casualty
3 Insurance Rate and Form Act, any form of policy which includes
4 coverage against the peril of fire and substantial coverage against
5 other perils without complying with the provisions of this section if
6 such policy with respect to the peril of fire includes provisions
7 which are the substantial equivalent of the minimum provisions of the
8 standard policy provided for in this section and if the policy is
9 complete as to all its terms without reference to any other document.

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

15 (8) ~~Policies of assessment~~ Assessment associations may
16 ~~be issued~~ issue policies with such modifications as shall be
17 ~~approved in writing by the Department of Insurance.~~ filed with the
18 director pursuant to the Property and Casualty Insurance Rate and
19 Form Act.

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

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

25 (11) Notwithstanding any other provision of this section,
26 ~~the Director of Insurance may approve~~ an insurer may file, pursuant
27 to the Property and Casualty Insurance Rate and Form Act, any form of

1 policy with variations in terms and conditions from the standard
2 policy provided for in this section.

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

5 44-507. The policies of any insurance company not organized
6 under the laws of this state may, if ~~approved by the Department of~~
7 ~~Insurance,~~ filed with the director pursuant to the Property and
8 Casualty Insurance Rate and Form Act, contain any provisions which
9 the law of the state, territory, district, or country under which
10 the company is organized prescribes, shall be in such policies when
11 issued in this state, and the policies of any insurance company
12 organized under the laws of this state may, when issued or delivered
13 in any other state, territory, district, or country, contain any
14 provision required by the laws of the state, territory, district, or
15 country in which ~~the same~~ such policies are issued, ~~anything in~~
16 the provisions of sections 44-501 to 44-510 to the contrary
17 notwithstanding.

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

20 44-508. The policies or contracts of insurance covering
21 legal liability for injury to a person or persons caused ~~through~~
22 by the ownership, operation, use, or maintenance of ~~automobiles~~
23 an automobile issued by any domestic or foreign company shall, if
24 ~~approved by the Department of Insurance,~~ filed with the director
25 pursuant to the Property and Casualty Insurance Rate and Form Act,
26 contain a provision ~~to the effect~~ that the insolvency or
27 bankruptcy of the assured shall not release the company from the

1 payment of damages for injury sustained or loss occasioned during the
2 life of the policy, and, in case of such insolvency or bankruptcy, an
3 action may be maintained within the terms and limits of the policy by
4 the injured person or his or her heirs against the insurer,
5 ~~company.~~

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

8 44-522. (1) ~~The Department of Insurance shall not approve~~
9 ~~any~~ No insurer may file an insurance policy ~~filed for approval~~
10 with the department, as required by the Property and Casualty
11 Insurance Rate and Form Act, which insures against loss or damage to
12 property or against legal liability from any cause unless such policy
13 contains appropriate provisions for cancellation thereof by either the
14 insurer or the insured and for nonrenewal thereof by the insurer.

15 (2) On any policy or binder of property, marine, or
16 liability insurance, as specified in section 44-201, the insurer shall
17 give the insured sixty days' written notice prior to cancellation or
18 nonrenewal of such policy or binder, except that the insurer may
19 cancel upon ten days' written notice to the insured in the event of
20 nonpayment of premium or if such policy or binder has a specified term
21 of sixty days or less unless the policy or binder has previously been
22 renewed. The requirements of this subsection shall apply to a
23 cancellation initiated by a premium finance company for nonpayment of
24 premium. The provisions of this subsection and subsection (4) of this
25 section shall not apply to nonrenewal of a policy or binder which has
26 a specified term of sixty days or less unless the policy or binder has
27 previously been renewed. Such notice shall state the reason for

1 cancellation or nonrenewal.

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

7 (a) Nonpayment of premium;

8 (b) The policy was obtained through a material
9 misrepresentation;

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

11 (d) Any insured has violated any of the terms and conditions
12 of the policy;

13 (e) The risk originally accepted has substantially
14 increased;

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

18 (g) The determination by the director that the continuation
19 of the policy could place the insurer in violation of the insurance
20 laws of this state.

21 (4) Notice of cancellation or nonrenewal shall be sent by
22 registered, certified, or first-class mail to the insured's last
23 mailing address known to the insurer. If sent by first-class mail, a
24 United States Postal Service certificate of mailing shall be
25 sufficient proof of receipt of notice on the third calendar day after
26 the date of the certificate.

27 (5) For purposes of this section:

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

4 (b) The transfer of a policyholder between insurers within
5 the same insurance group shall be considered a cancellation or a
6 refusal to renew a policy only if the transfer results in policy
7 coverage or rates substantially less favorable to the insured.

8 (6) The requirements of subsections (2), (3), and (4) of
9 this section shall not apply to automobile insurance coverage,
10 insurance coverage issued under the Nebraska Workers' Compensation
11 Act, insurance coverage on growing crops, or insurance coverage which
12 is for a specified season or event and which is not subject to renewal
13 or replacement.

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

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

18 44-1104. (1) The director may suspend, revoke, or refuse to
19 issue or renew a license if the director finds that:

20 (a) There was any material misrepresentation in the
21 application for the license;

22 (b) The applicant or licensee or any officer, partner,
23 member, or key management personnel is subject to a final
24 administrative action or is otherwise shown to be untrustworthy or
25 incompetent;

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

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

6 (e) The viatical settlement provider has entered into any
7 viatical settlement contract that has not been approved pursuant to
8 the Viatical Settlements Act;

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

11 (g) The licensee no longer meets the requirements for
12 initial licensure;

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

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

24 (j) The licensee has failed to respond to the department
25 within fifteen working days after receipt of an inquiry from the
26 department.

27 (2) ~~If the~~ The director ~~denies a license application or~~

1 ~~suspends, revokes, or refuses to renew~~ may suspend or revoke a
2 ~~license, the director shall conduct~~ pursuant to subsection (1) of
3 this section after notice and a hearing held in accordance with the
4 Administrative Procedure Act.

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

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

15 44-4501. Sections 44-4501 to 44-4520 and section 10 of this
16 act shall be known and may be cited as the Long-Term Care Insurance
17 Act.

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

25 (2) The one-time training course required by subsection (1)
26 of this section shall be no less than eight hours in length and the
27 required ongoing training shall be no less than four hours in length.

1 All training required under subsection (1) of this section shall
2 consist of topics related to long-term care insurance, long-term care
3 services, and, if applicable, qualified state long-term insurance
4 partnership programs, including, but not limited to:

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

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

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

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

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

16 (f) Consumer suitability standards and guidelines.

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

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

27 (b) Insurers subject to the act shall maintain records with

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

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

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

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

19 44-4519. The director may adopt and promulgate rules and
20 regulations to carry out the Long-Term Care Insurance Act, including
21 minimum standards for insurance producer training.

22 Sec. 12. Section 44-5501, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-5501. Sections 44-5501 to 44-5514 and section 15 of this
25 act shall be known and may be cited as the Surplus Lines Insurance
26 Act.

27 Sec. 13. Section 44-5502, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-5502. For purposes of the Surplus Lines Insurance Act:

3 (1) Department ~~shall mean~~ means the Department of
4 Insurance;

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

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

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

11 (5) Industrial insured means an insured that:

12 (a) Procures the insurance of any risk or risks other than
13 sickness and accident insurance and life and annuity contracts, has
14 fifty full-time employees, and has aggregate annual premiums for
15 insurance on all risks other than workers' compensation insurance
16 that total at least one hundred thousand dollars; and

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

22 Sec. 14. Section 44-5504, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-5504. (1) No person, other than an industrial insured,
25 shall place, procure, or effect insurance upon any risk located in
26 this state in any nonadmitted insurer until such person has first been
27 issued a surplus lines license from the department as provided in

1 section 44-5503.

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

7 (3)(a) All corporate surplus lines licenses shall expire on
8 April 30 of each year, and all individual surplus lines licenses shall
9 expire on the licensee's birthday in the first year after issuance in
10 which his or her age is divisible by two, and all individual surplus
11 lines licenses may be renewed within the ninety-day period before
12 their expiration dates and all individual surplus lines licenses also
13 may be renewed within the thirty-day period after their expiration
14 dates upon payment of a late renewal fee as established by the
15 director not to exceed two hundred dollars in addition to the
16 applicable fee otherwise required for renewal of individual surplus
17 lines licenses as established by the director pursuant to subsection
18 (2) of this section. All individual surplus lines licenses renewed
19 within the thirty-day period after their expiration dates pursuant to
20 this subdivision shall be deemed to have been renewed before their
21 expiration dates. The department shall establish procedures for the
22 renewal of surplus lines licenses.

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

25 Sec. 15. Every industrial insured shall annually, on or
26 before February 15, pay to the department a tax of three percent on
27 the total gross amount of insurance premiums for policies procured

1 through nonadmitted insurers. Every industrial insured shall pay the
2 fire insurance tax prescribed in section 81-523. The department shall
3 prescribe a form for an industrial insured tax filing.

4 Sec. 16. Section 44-7504, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-7504. For purposes of the Property and Casualty Insurance
7 Rate and Form Act:

8 (1) Advisory organization means any entity, including its
9 affiliates or subsidiaries, which (a) has majority ownership or
10 control by two or more insurers and assists two or more insurers in
11 activities related to ratemaking, the promulgation of policy forms, or
12 related matters or (b) makes the same prospective loss cost or policy
13 form filings on behalf of or to be available for two or more insurers.
14 For purposes of this subdivision, a group of insurers under common
15 ownership or control shall be considered a single insurer. Advisory
16 organization does not include joint reinsurance pools, joint
17 underwriting pools, or insurers engaged in joint underwriting;

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

21 (3) Director means the Director of Insurance;

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

26 (5) Expense means that portion of a rate attributable to
27 acquisition, field supervision, collection expense, general expense,

1 taxes, licenses, and fees. Expense does not include loss adjustment
2 expense;

3 (6) Experience rating plan means a rating formula and
4 related procedures that use past loss experience of an individual
5 policyholder to forecast future losses by measuring the policyholder's
6 loss experience against the expected losses for policyholders in that
7 classification to produce a prospective premium credit, debit, or
8 unity modification;

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

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

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

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

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

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

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

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

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

25 (15) Special assessments means guaranty fund assessments
26 made pursuant to section 44-2407, Workers' Compensation Trust Fund
27 assessments made pursuant to section 48-162.02, residual market

1 assessments made pursuant to section 44-7528 or ~~48-146.01~~, section
2 3 of this act, and similar assessments. Special assessments are not
3 expenses or losses;

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

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

17 Sec. 17. Section 48-144.03, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 48-144.03. (1) Notwithstanding policy provisions that
20 stipulate a workers' compensation insurance policy to be a contract
21 with a fixed term of coverage that expires at the end of the term,
22 coverage under a workers' compensation insurance policy shall continue
23 in full force and effect until notice is given in accordance with this
24 section.

25 (2) No cancellation of a workers' compensation insurance
26 policy within the policy period shall be effective unless notice of
27 the cancellation is given by the workers' compensation insurer to the

1 Nebraska Workers' Compensation Court and to the employer. No such
2 cancellation shall be effective until thirty days after the giving of
3 such notices, except that the cancellation may be effective ten days
4 after the giving of such notices if such cancellation is based on (a)
5 notice from the employer to the insurer to cancel the policy, (b)
6 nonpayment of premium due the insurer under any policy written by the
7 insurer for the employer, (c) failure of the employer to reimburse
8 deductible losses as required under any policy written by the insurer
9 for the employer, or (d) failure of the employer, if covered pursuant
10 to section ~~48-146.01~~, 3 of this act, to comply with sections
11 48-443 to 48-445.

12 (3) No workers' compensation insurance policy shall expire
13 or lapse at the end of the policy period unless notice of nonrenewal
14 is given by the workers' compensation insurer to the compensation
15 court and to the employer. No workers' compensation insurance policy
16 shall expire or lapse until thirty days after the giving of such
17 notices, except that a policy may expire or lapse ten days after the
18 giving of such notices if the nonrenewal is based on (a) notice from
19 the employer to the insurer to not renew the policy, (b) nonpayment of
20 premium due the insurer under any policy written by the insurer for
21 the employer, (c) failure of the employer to reimburse deductible
22 losses as required under any policy written by the insurer for the
23 employer, or (d) failure of the employer, if covered pursuant to
24 section ~~48-146.01~~, 3 of this act, to comply with sections 48-443
25 to 48-445.

26 (4) Notwithstanding other provisions of this section, if the
27 employer has secured workers' compensation insurance coverage with

1 another workers' compensation insurer, then the cancellation or
2 nonrenewal shall be effective as of the effective date of such other
3 insurance coverage.

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

6 (6) The notices required by this section shall be provided
7 in writing and shall be deemed given upon the mailing of such notices
8 by certified mail, except that notices from insurers to the
9 compensation court may be provided by electronic means if such
10 electronic means is approved by the administrator of the compensation
11 court. If notice is provided by electronic means pursuant to such an
12 approval, it shall be deemed given upon receipt by the compensation
13 court.

14 Sec. 18. Section 48-446, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 48-446. (1) There is hereby created the Workplace Safety
17 Consultation Program. It is the intent of the Legislature that such
18 program help provide employees in Nebraska with safe and healthful
19 workplaces.

20 (2) Under the Workplace Safety Consultation Program, the
21 Department of Labor may conduct workplace inspections and
22 consultations to determine whether employers are complying with
23 standards issued by the federal Occupational Safety and Health
24 Administration or the federal Mine Safety and Health Administration
25 for safe and healthful workplaces. Workplace inspections and safety
26 consultations shall be performed by employees of the Department of
27 Labor who are knowledgeable and experienced in the occupational safety

1 and health field and who are trained in the federal standards and in
2 the recognition of safety and health hazards. The Department of Labor
3 may employ qualified persons as may be necessary to carry out this
4 section.

5 (3) All employers shall be subject to occupational safety
6 and health inspections covering their Nebraska operations. Employers
7 shall be selected by the Commissioner of Labor for inspection on the
8 basis of factors intended to identify the likelihood of workplace
9 injuries and to achieve the most efficient utilization of safety
10 personnel of the Department of Labor. Such factors shall include:

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

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

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

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

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

24 (f) Workplace hazards as may be reported to the Department
25 of Insurance, the Nebraska Workers' Compensation Court, or the
26 Department of Labor;

27 (g) Previous safety and health history;

1 (h) Possible employee exposure to toxic substances;

2 (i) Requests by employers for the Department of Labor to
3 inspect their workplaces or otherwise provide consulting services on a
4 basis by which the employer will reimburse the Department of Labor;
5 and

6 (j) All other relevant factors.

7 (4) Hazards identified by an inspection shall be eliminated
8 within a reasonable time as specified by the Commissioner of Labor.

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

13 (6) At the discretion of the Commissioner of Labor,
14 inspection of an employer may be repeated to ensure compliance by the
15 employer, with the expenses incurred by the Department of Labor to be
16 paid by the employer.

17 (7) The Commissioner of Labor shall adopt and promulgate
18 rules and regulations establishing a schedule of fees for
19 consultations and inspections. Such fees shall be established with due
20 regard for the costs of administering the Workplace Safety
21 Consultation Program. The cost of consultations and inspections shall
22 be borne by each employer for which these services are rendered.

23 (8) There is hereby created the Workplace Safety
24 Consultation Program Cash Fund. All fees collected pursuant to the
25 Workplace Safety Consultation Program shall be remitted to the State
26 Treasurer for credit to the fund and shall be used for the sole
27 purpose of administering the program. Any money in the fund available

1 for investment shall be invested by the state investment officer
2 pursuant to the Nebraska Capital Expansion Act and the Nebraska State
3 Funds Investment Act.

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

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

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

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

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

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

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

24 (16) The Commissioner of Labor shall adopt and promulgate
25 rules and regulations to carry out this section.

26 Sec. 19. The Revisor of Statutes shall assign section 3 of
27 this act to Chapter 44, article 3.

1 Sec. 20. Original sections 21-2005, 44-319.07, 44-501,
2 44-507, 44-508, 44-522, 44-1104, 44-4501, 44-4519, 44-5501, 44-5502,
3 44-5504, 44-7504, and 48-446, Reissue Revised Statutes of Nebraska,
4 and sections 48-144.03 and 48-146.01, Revised Statutes Cumulative
5 Supplement, 2006, are repealed.