

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 192**

Introduced by Pahls, 31.

Read first time January 12, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 12-1116,  
2 44-710.03, 44-710.04, 44-4065, 44-5223, 44-5225, 44-5260,  
3 44-5904, and 44-5905, Reissue Revised Statutes of  
4 Nebraska, and sections 44-1988 and 44-5103, Revised  
5 Statutes Cumulative Supplement, 2008; to provide powers  
6 for the Director of Insurance under the Burial Pre-Need  
7 Sale Act; to provide for a coordination of benefits  
8 provision in sickness and accident insurance policies;  
9 to change and eliminate provisions relating to reserves  
10 under the Title Insurers Act; to provide and change  
11 reporting requirements under the Insurance Producers  
12 Licensing Act; to change provisions relating to health  
13 benefit plans under the Small Employer Health Insurance  
14 Availability Act; to change examination and record

1           retention requirements under the Insurers Examination  
2           Act; to define and redefine terms; to harmonize  
3           provisions; and to repeal the original sections.  
4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 12-1116, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

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

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

9           (b) The licensee, either knowingly or without the  
10 exercise of due care to prevent the same, has violated any of  
11 the provisions of the Burial Pre-Need Sale Act or any rule or  
12 regulation adopted and promulgated by the director pursuant to such  
13 act; ~~or~~

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

17           (d) The licensee, upon receipt of a written inquiry from  
18 the department, has failed to respond to such inquiry or has failed  
19 to request an additional reasonable amount of time to respond to  
20 such inquiry within fifteen business days after such receipt.

21           (2) Written notification shall be provided to the  
22 licensee upon the director's making such determination, and the  
23 notice shall be mailed by the director to the last address on file  
24 for the licensee by certified or registered mail, return receipt  
25 requested. The notice shall state the specific action contemplated

1 by the director and the specific grounds for such action. The  
2 notice shall allow the licensee receiving such notice twenty days  
3 from the date of actual receipt to:

4 (a) Voluntarily surrender his or her license; or

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

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

22 Sec. 2. Section 44-710.03, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 44-710.03 Except as provided in section 44-710.05, each  
25 policy of sickness and accident insurance delivered or issued for

1 delivery to any person in this state shall contain the provisions  
2 specified in this section in the words in which the same appear  
3 in this section, except that the insurer may, at its option,  
4 substitute for one or more of such provisions corresponding  
5 provisions of different wording approved by the Director of  
6 Insurance which are in each instance not less favorable in any  
7 respect to the insured or the beneficiary. Such provisions shall  
8 be preceded individually by the caption appearing in this section  
9 or, at the option of the insurer, by such appropriate individual  
10 or group captions or subcaptions as the Director of Insurance may  
11 approve.

12 (1) A provision as follows: ENTIRE CONTRACT: CHANGES:  
13 This policy, including the endorsements and the attached papers,  
14 if any, constitutes the entire contract of insurance. No change in  
15 this policy shall be valid until approved by an executive officer  
16 of the insurer and unless such approval be endorsed hereon or  
17 attached hereto. No agent has authority to change this policy or to  
18 waive any of its provisions.

19 (2) A provision as follows: TIME LIMIT ON CERTAIN  
20 DEFENSES: (a) After two years from the date of issue of this  
21 policy no misstatements, except fraudulent misstatements, made by  
22 the applicant in the application for such policy shall be used to  
23 void the policy or to deny a claim for loss incurred or disability,  
24 as defined in the policy, commencing after the expiration of such  
25 two-year period. The foregoing policy provision shall not be so

1 construed as to affect any legal requirement for avoidance of a  
 2 policy or denial of a claim during such initial two-year period  
 3 nor to limit the application of subdivisions (1) through ~~(5)~~ (6)  
 4 of section 44-710.04 in the event of misstatement with respect to  
 5 age or occupation or other insurance. A policy which the insured  
 6 has the right to continue in force subject to its terms by the  
 7 timely payment of premium until at least age fifty or, in the  
 8 case of a policy issued after age forty-four, for at least five  
 9 years from its date of issue, may contain in lieu of the foregoing  
 10 the following provision, from which the clause "as defined in  
 11 the policy" may be omitted at the insurer's option, under the  
 12 caption INCONTESTABLE: After this policy has been in force for a  
 13 period of two years during the lifetime of the insured, excluding  
 14 any period during which the insured is disabled, it shall become  
 15 incontestable as to the statements contained in the application.  
 16 (b) No claim for loss incurred or disability, as defined in the  
 17 policy, commencing after two years from the date of issue of this  
 18 policy shall be reduced or denied on the ground that disease or  
 19 physical condition not excluded from coverage by name or specific  
 20 description effective on the date of loss had existed prior to the  
 21 effective date of coverage of this policy.

22 (3) A provision as follows: GRACE PERIOD: A grace period  
 23 of ..... (insert a number not less than 7 for weekly premium  
 24 policies, 10 for monthly premium policies, and 31 for all other  
 25 policies) days will be granted for the payment of each premium

1 falling due after the first premium, during which grace period  
2 the policy shall continue in force. A policy which contains a  
3 cancellation provision may add, at the end of the above provision:  
4 Subject to the right of the insurer to cancel in accordance with  
5 the cancellation provision hereof. A policy in which the insurer  
6 reserves the right to refuse any renewal shall have, at the  
7 beginning of the above provision: Unless not less than thirty days  
8 prior to the premium due date the insurer has delivered to the  
9 insured or has mailed to his or her last address as shown by  
10 the records of the insurer written notice of its intention not to  
11 renew this policy beyond the period for which the premium has been  
12 accepted.

13 (4) A provision as follows: REINSTATEMENT: If any renewal  
14 premium be not paid within the time granted the insured for  
15 payment, a subsequent acceptance of premium by the insurer or  
16 by any agent duly authorized by the insurer to accept such  
17 premium, without requiring in connection therewith an application  
18 for reinstatement, shall reinstate the policy, except that if the  
19 insurer or such agent requires an application for reinstatement  
20 and issues a conditional receipt for the premium tendered, the  
21 policy will be reinstated upon approval of such application by  
22 the insurer or, lacking such approval, upon the forty-fifth day  
23 following the date of such conditional receipt unless the insurer  
24 has previously notified the insured in writing of its disapproval  
25 of such application. The reinstated policy shall cover only loss

1 resulting from such accidental injury as may be sustained after  
 2 the date of reinstatement and loss due to such sickness as may  
 3 begin more than ten days after such date. In all other respects  
 4 the insured and insurer shall have the same rights thereunder as  
 5 they had under the policy immediately before the due date of the  
 6 defaulted premium, subject to any provisions endorsed hereon or  
 7 attached hereto in connection with the reinstatement. Any premium  
 8 accepted in connection with a reinstatement shall be applied to a  
 9 period for which premium has not been previously paid but not to  
 10 any period more than sixty days prior to the date of reinstatement.

11 (The last sentence of the above provision may be omitted from  
 12 any policy which the insured has the right to continue in force  
 13 subject to its terms by the timely payment of premiums (a) until  
 14 at least age fifty or (b) in the case of a policy issued after age  
 15 forty-four, for at least five years from its date of issue.)

16 (5) A provision as follows: NOTICE OF CLAIM: Written  
 17 notice of claim must be given to the insurer within twenty days  
 18 after the occurrence or commencement of any loss covered by the  
 19 policy or as soon thereafter as is reasonably possible. Notice  
 20 given by or on behalf of the insured or the beneficiary to the  
 21 insurer at ..... (insert the location of such office as  
 22 the insurer may designate for the purpose), or to any authorized  
 23 agent of the insurer, with information sufficient to identify  
 24 the insured, shall be deemed notice to the insurer. In a policy  
 25 providing a loss-of-time benefit which may be payable for at least



1 two years, an insurer may at its option insert the following  
2 between the first and second sentences of the above provision:  
3 Subject to the qualifications set forth below, if the insured  
4 suffers loss of time on account of disability for which indemnity  
5 may be payable for at least two years, he or she shall, at least  
6 once in every six months after having given notice of claim, give  
7 to the insurer notice of continuance of such disability, except in  
8 the event of legal incapacity. The period of six months following  
9 any filing of proof by the insured or any payment by the insurer  
10 on account of such claim or any denial of liability in whole or in  
11 part by the insurer shall be excluded in applying this provision.  
12 Delay in the giving of such notice shall not impair the insured's  
13 right to any indemnity which would otherwise have accrued during  
14 the period of six months preceding the date on which such notice is  
15 actually given.

16 (6) A provision as follows: CLAIM FORMS: The insurer,  
17 upon receipt of a notice of claim, will furnish to the claimant  
18 such forms as are usually furnished by it for filing proofs of  
19 loss. If such forms are not furnished within fifteen days after  
20 the giving of such notice, the claimant shall be deemed to have  
21 complied with the requirements of this policy as to proof of  
22 loss upon submitting, within the time fixed in the policy for  
23 filing proofs of loss, written proof covering the occurrence, the  
24 character, and the extent of the loss for which claim is made.

25 (7) A provision as follows: PROOFS OF LOSS: Written proof

1 of loss must be furnished to the insurer at its office in case  
 2 of claim for loss for which the policy provides any periodic  
 3 payment contingent upon continuing loss within ninety days after  
 4 the termination of the period for which the insurer is liable and  
 5 in case of claim for any other loss within ninety days after the  
 6 date of such loss. Failure to furnish such proof within the time  
 7 required shall not invalidate nor reduce any claim if it was not  
 8 reasonably possible to give proof within such time and if such  
 9 proof is furnished as soon as reasonably possible and in no event,  
 10 except in the absence of legal capacity, later than one year from  
 11 the time proof is otherwise required.

12 (8) A provision as follows: TIME OF PAYMENT OF CLAIMS:  
 13 Indemnities payable under this policy for any loss other than  
 14 loss for which this policy provides any periodic payment will be  
 15 paid immediately upon receipt of due written proof of such loss.  
 16 Subject to due written proof of loss, all accrued indemnities for  
 17 loss for which this policy provides periodic payment will be paid  
 18 ..... (insert period for payment which must not be less  
 19 frequently than monthly) and any balance remaining unpaid upon the  
 20 termination of liability will be paid immediately upon receipt of  
 21 due written proof.

22 (9) A provision as follows: PAYMENT OF CLAIMS: Indemnity  
 23 for loss of life will be payable in accordance with the beneficiary  
 24 designation and the provisions respecting such payment which may  
 25 be prescribed herein and effective at the time of payment. If no

1 such designation or provision is then effective, such indemnity  
2 shall be payable to the estate of the insured. Any other accrued  
3 indemnities unpaid at the insured's death may, at the option of  
4 the insurer, be paid either to such beneficiary or to such estate.  
5 All other indemnities will be payable to the insured. The following  
6 provisions, or either of them, may be included with the foregoing  
7 provision at the option of the insurer: (a) If any indemnity of  
8 this policy shall be payable to the estate of the insured, or to  
9 an insured or beneficiary who is a minor or otherwise not competent  
10 to give a valid release, the insurer may pay such indemnity, up  
11 to an amount not exceeding \$..... (insert an amount which  
12 shall not exceed five thousand dollars), to any relative by blood  
13 or connection by marriage of the insured or beneficiary who is  
14 deemed by the insurer to be equitably entitled thereto. Any payment  
15 made by the insurer in good faith pursuant to this provision shall  
16 fully discharge the insurer to the extent of such payment. (b)  
17 Subject to any written direction of the insured in the application  
18 or otherwise all or a portion of any indemnities provided by  
19 this policy on account of hospital, nursing, medical, or surgical  
20 services may, at the insurer's option and unless the insured  
21 requests otherwise in writing not later than the time of filing  
22 proofs of such loss, be paid directly to the hospital or person  
23 rendering such services; but it is not required that the service be  
24 rendered by a particular hospital or person.

25 (10) A provision as follows: PHYSICAL EXAMINATIONS AND

1 AUTOPSY: The insurer at its own expense shall have the right  
2 and opportunity to examine the person of the insured when and as  
3 often as it may reasonably require during the pendency of a claim  
4 hereunder and to make an autopsy in case of death where it is not  
5 forbidden by law.

6 (11) A provision as follows: LEGAL ACTIONS: No action at  
7 law or in equity shall be brought to recover on this policy prior  
8 to the expiration of sixty days after written proof of loss has  
9 been furnished in accordance with the requirements of this policy.  
10 No such action shall be brought after the expiration of three years  
11 after the time written proof of loss is required to be furnished.

12 (12) A provision as follows: CHANGE OF BENEFICIARY:  
13 Unless the insured makes an irrevocable designation of beneficiary,  
14 the right to change of beneficiary is reserved to the insured  
15 and the consent of the beneficiary or beneficiaries shall not  
16 be requisite to surrender or assignment of this policy, to any  
17 change of beneficiary or beneficiaries, or to any other changes  
18 in this policy. The first clause of this provision, relating to  
19 the irrevocable designation of beneficiary, may be omitted at the  
20 insurer's option.

21 Sec. 3. Section 44-710.04, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 44-710.04 Except as provided in sections 44-710.05 and  
24 44-787, no policy of sickness and accident insurance delivered or  
25 issued for delivery to any person in this state shall contain

1 provisions respecting the matters set forth below unless such  
2 provisions are in the words in which the same appear in this  
3 section, except that the insurer may, at its option, use in  
4 lieu of any such provision a corresponding provision of different  
5 wording approved by the Director of Insurance which is not less  
6 favorable in any respect to the insured or the beneficiary.  
7 Any such provision contained in the policy shall be preceded  
8 individually by the appropriate caption appearing in this section  
9 or, at the option of the insurer, by such appropriate individual  
10 or group captions or subcaptions as the Director of Insurance may  
11 approve.

12 (1) A provision as follows: CHANGE OF OCCUPATION: If the  
13 insured be injured or contract sickness after having changed his or  
14 her occupation to one classified by the insurer as more hazardous  
15 than that stated in this policy or while doing for compensation  
16 anything pertaining to an occupation so classified, the insurer  
17 will pay only such portion of the indemnities provided in this  
18 policy as the premium paid would have purchased at the rates and  
19 within the limits fixed by the insurer for such more hazardous  
20 occupation. If the insured changes his or her occupation to one  
21 classified by the insurer as less hazardous than that stated in  
22 this policy, the insurer, upon receipt of proof of such change  
23 of occupation, will reduce the premium rate accordingly and will  
24 return the excess pro rata unearned premium from the date of change  
25 of occupation or from the policy anniversary date immediately

1 preceding receipt of such proof, whichever is the more recent. In  
 2 applying this provision, the classification of occupational risk  
 3 and the premium rates shall be such as have been last filed by the  
 4 insurer prior to the occurrence of the loss for which the insurer  
 5 is liable or prior to date of proof of change in occupation with  
 6 the state official having supervision of insurance in the state  
 7 where the insured resided at the time this policy was issued;  
 8 but if such filing was not required, then the classification of  
 9 occupational risk and the premium rates shall be those last made  
 10 effective by the insurer in such state prior to the occurrence of  
 11 the loss or prior to the date of proof of change of occupation.

12 (2) A provision as follows: MISSTATEMENT OF AGE: If the  
 13 age of the insured has been misstated, all amounts payable under  
 14 this policy shall be such as the premium paid would have purchased  
 15 at the correct age.

16 (3) A Except as provided in subdivision (6) of this  
 17 section, a provision as follows: OTHER INSURANCE IN THIS INSURER:  
 18 If an accident or sickness or accident and sickness policy or  
 19 policies previously issued by the insurer to the insured be  
 20 in force concurrently herewith, making the aggregate indemnity  
 21 for ..... (insert type of coverage or coverages) in  
 22 excess of \$...... (insert maximum limit of indemnity or  
 23 indemnities), the excess insurance shall be void and all premiums  
 24 paid for such excess shall be returned to the insured or to his  
 25 or her estate; or in lieu thereof: Insurance effective at any one

1 time on the insured under a like policy or policies in this insurer  
2 is limited to the one such policy elected by the insured, his or  
3 her beneficiary, or his or her estate, as the case may be, and the  
4 insurer will return all premiums paid for all other such policies.

5 (4) A Except as provided in subdivision (6) of this  
6 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If  
7 there be other valid coverage, not with this insurer, providing  
8 benefits for the same loss on a provision-of-service basis or on an  
9 expense-incurred basis and of which this insurer has not been given  
10 written notice prior to the occurrence or commencement of loss, the  
11 only liability under any expense-incurred coverage of this policy  
12 shall be for such proportion of the loss as the amount which would  
13 otherwise have been payable hereunder plus the total of the like  
14 amounts under all such other valid coverages for the same loss  
15 of which this insurer had notice bears to the total like amounts  
16 under all valid coverages for such loss and for the return of such  
17 portion of the premiums paid as shall exceed the pro rata portion  
18 for the amount so determined. For the purpose of applying this  
19 provision when other coverage is on a provision-of-service basis,  
20 the like amount of such other coverage shall be taken as the amount  
21 which the services rendered would have cost in the absence of such  
22 coverage. If the foregoing policy provision is included in a policy  
23 which also contains the next following policy provision there shall  
24 be added to the caption of the foregoing provision the phrase ....  
25 EXPENSE-INCURRED BENEFITS. The insurer may, at its option, include

1 in this provision a definition of other valid coverage, approved  
2 as to form by the Director of Insurance, which definition shall  
3 be limited in subject matter to coverage provided by organizations  
4 subject to regulation by insurance law or by insurance authorities  
5 of this or any other state of the United States or any province  
6 of Canada and by hospital or medical service organizations and  
7 to any other coverage the inclusion of which may be approved by  
8 the Director of Insurance. In the absence of such definition such  
9 term shall not include group insurance, automobile medical payments  
10 insurance, or coverage provided by hospital or medical service  
11 organizations or by union welfare plans or employer or employee  
12 benefit organizations. For the purpose of applying the foregoing  
13 policy provision with respect to any insured, any amount of benefit  
14 provided for such insured pursuant to any compulsory benefit  
15 statute, including any workers' compensation or employers liability  
16 statute, whether provided by a governmental agency or otherwise  
17 shall in all cases be deemed to be other valid coverage of which  
18 the insurer has had notice. In applying the foregoing policy  
19 provision no third-party liability coverage shall be included as  
20 other valid coverage.

21 (5) A Except as provided in subdivision (6) of this  
22 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If  
23 there be other valid coverage, not with this insurer, providing  
24 benefits for the same loss on other than an expense-incurred basis  
25 and of which this insurer has not been given written notice prior



1 to the occurrence or commencement of loss, the only liability for  
2 such benefits under this policy shall be for such proportion of  
3 the indemnities otherwise provided hereunder for such loss as the  
4 like indemnities of which the insurer had notice (including the  
5 indemnities under this policy) bear to the total amount of all  
6 like indemnities for such loss, and for the return of such portion  
7 of the premium paid as shall exceed the pro rata portion for  
8 the indemnities thus determined. If the foregoing policy provision  
9 is included in a policy which also contains the next preceding  
10 policy provision, there shall be added to the caption of the  
11 foregoing provision the phrase .... OTHER BENEFITS. The insurer  
12 may, at its option, include in this provision a definition of  
13 other valid coverage, approved as to form by the Director of  
14 Insurance, which definition shall be limited in subject matter  
15 to coverage provided by organizations subject to regulation by  
16 insurance law or by insurance authorities of this or any other  
17 state of the United States or any province of Canada and to any  
18 other coverage the inclusion of which may be approved by the  
19 Director of Insurance. In the absence of such definition such term  
20 shall not include group insurance or benefits provided by union  
21 welfare plans or by employer or employee benefit organizations. For  
22 the purpose of applying the foregoing policy provision with respect  
23 to any insured, any amount of benefit provided for such insured  
24 pursuant to any compulsory benefit statute, including any workers'  
25 compensation or employers liability statute, whether provided by a

1 governmental agency or otherwise shall in all cases be deemed to  
2 be other valid coverage of which the insurer has had notice. In  
3 applying the foregoing policy provision no third-party liability  
4 coverage shall be included as other valid coverage.

5 (6) In lieu of the provisions set forth in subdivisions  
6 (3) through (5) of this section, the insurer may at its option  
7 include a provision entitled COORDINATION OF BENEFITS which  
8 provides for nonduplication and coordination between two or more  
9 coverages based on rules and regulations adopted and promulgated  
10 by the director.

11 ~~(6)~~ (7) A provision as follows: RELATION OF EARNINGS TO  
12 INSURANCE: If the total monthly amount of loss-of-time benefits  
13 promised for the same loss under all valid loss-of-time coverage  
14 upon the insured, whether payable on a weekly or monthly basis,  
15 shall exceed the monthly earnings of the insured at the time  
16 disability commenced or his or her average monthly earnings for  
17 the period of two years immediately preceding a disability for  
18 which claim is made, whichever is the greater, the insurer will  
19 be liable only for such proportionate amount of such benefits  
20 under this policy as the amount of such monthly earnings or such  
21 average monthly earnings of the insured bears to the total amount  
22 of monthly benefits for the same loss under all such coverage  
23 upon the insured at the time such disability commences and for the  
24 return of such part of the premiums paid during such two years as  
25 shall exceed the pro rata amount of the premiums for the benefits

1 actually paid hereunder; but this shall not operate to reduce the  
2 total monthly amount of benefits payable under all such coverage  
3 upon the insured below the sum of two hundred dollars or the sum  
4 of the monthly benefits specified in such coverages, whichever is  
5 the lesser, nor shall it operate to reduce benefits other than  
6 those payable for loss of time. The foregoing policy provision may  
7 be inserted only in a policy which the insured has the right to  
8 continue in force subject to its terms by the timely payment of  
9 premiums (a) until at least age fifty or (b) in the case of a  
10 policy issued after age forty-four for at least five years from  
11 its date of issue. The insurer may, at its option, include in this  
12 provision a definition of valid loss-of-time coverage, approved  
13 as to form by the Director of Insurance, which definition shall  
14 be limited in subject matter to coverage provided by governmental  
15 agencies or by organizations subject to regulation by insurance  
16 law or by insurance authorities of this or any other state of  
17 the United States or any province of Canada or to any other  
18 coverage the inclusion of which may be approved by the Director of  
19 Insurance or any combination of such coverages. In the absence of  
20 such definition such term shall not include any coverage provided  
21 for such insured pursuant to any compulsory benefit statute,  
22 including any workers' compensation or employers liability statute,  
23 or benefits provided by union welfare plans or by employer or  
24 employee benefit organizations.

25 ~~(7)~~ (8) A provision as follows: UNPAID PREMIUM: Upon the

1 payment of a claim under this policy, any premium then due and  
2 unpaid or covered by any note or written order may be deducted  
3 therefrom.

4 ~~(8)~~ (9) A provision as follows: CANCELLATION: The insurer  
5 may cancel this policy at any time by written notice delivered to  
6 the insured which shall be effective only if mailed by certified  
7 or registered mail to the named insured at his or her last-known  
8 address, as shown by the records of the insurer, at least thirty  
9 days prior to the effective date of cancellation, except that  
10 cancellation due to failure to pay the premium or in cases of fraud  
11 or misrepresentation shall not require that such notice be given at  
12 least thirty days prior to cancellation. Subject to any provisions  
13 in the policy or a grace period, cancellation for failure to pay a  
14 premium shall be effective as of midnight of the last day for which  
15 the premium has been paid. In cases of fraud or misrepresentation,  
16 coverage shall be canceled upon the date of the notice or any later  
17 date designated by the insurer. After the policy has been continued  
18 beyond its original term the insured may cancel this policy at  
19 any time by written notice delivered or mailed to the insurer,  
20 effective upon receipt or on such later date as may be specified  
21 in such notice. In the event of cancellation, the insurer will  
22 return promptly the unearned portion of any premium paid. If the  
23 insured cancels, the earned premium shall be computed by the use  
24 of the short-rate table last filed with the state official having  
25 supervision of insurance in the state where the insured resided

1 when the policy was issued. If the insurer cancels, the earned  
2 premium shall be computed pro rata. Cancellation shall be without  
3 prejudice to any claim originating prior to the effective date of  
4 cancellation.

5 ~~(9)~~ (10) A provision as follows: CONFORMITY WITH STATE  
6 STATUTES: Any provision of this policy which, on its effective  
7 date, is in conflict with the statutes of the state in which the  
8 insured resides on such date is hereby amended to conform to the  
9 minimum requirements of such statutes.

10 ~~(10)~~ (11) A provision as follows: ILLEGAL OCCUPATION: The  
11 insurer shall not be liable for any loss to which a contributing  
12 cause was the insured's commission of or attempt to commit a felony  
13 or to which a contributing cause was the insured's being engaged in  
14 an illegal occupation.

15 ~~(11)~~ (12) A provision as follows: INTOXICANTS AND  
16 NARCOTICS: The insurer shall not be liable for any loss sustained  
17 or contracted in consequence of the insured's being intoxicated  
18 or under the influence of any narcotic unless administered on the  
19 advice of a physician.

20 Sec. 4. Section 44-1988, Revised Statutes Cumulative  
21 Supplement, 2008, is amended to read:

22 44-1988 (1) In determining the financial condition of a  
23 title insurer transacting the business of title insurance under the  
24 Title Insurers Act, the general provisions of the insurance laws  
25 of this state requiring the establishment of reserves sufficient to

1 cover all known and unknown liabilities, including allocated and  
2 unallocated loss adjustment expense, shall apply except as provided  
3 in subsections (2) through (4) of this section.

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

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

18 (b) (i) If a title insurer is a domestic insurer of this  
19 state, the title insurer shall establish and maintain a statutory  
20 or unearned premium reserve ~~consisting of the amount of the~~  
21 ~~statutory or unearned premium or reinsurance reserve on September~~  
22 ~~13, 1997, which balance shall be released in accordance with the~~  
23 ~~law in effect at the time such sums were added to the reserve. in~~  
24 an amount equal to seventeen cents per one thousand dollars of net  
25 retained liability for each insurance policy.

1           (ii) The amount set aside in the reserve required under  
2 subdivision (3)(b)(i) of this section shall be released from the  
3 reserve and restored to net profits over a period of twenty years  
4 pursuant to the following formula: Thirty percent of the aggregate  
5 sum in the year next succeeding the year of addition; fifteen  
6 percent of the aggregate sum in the next succeeding year; ten  
7 percent of the aggregate sum in each of the next succeeding two  
8 years; five percent of the aggregate sum in each of the next  
9 succeeding two years; three percent of the aggregate sum in each  
10 of the next succeeding two years; two percent of the aggregate  
11 sum in each of the next succeeding seven years; and one percent  
12 of the aggregate sum in each of the next succeeding five years.  
13 For each year in which a release of statutory or unearned premium  
14 reserve is authorized under this subdivision, such reserve shall  
15 be released over the course of the year in twelve equal monthly  
16 amounts, beginning on July 1.

17           ~~(ii)~~ (c)(i) If a title insurer that is organized under  
18 the laws of another state transfers its domicile to this state, the  
19 statutory or unearned premium reserve shall be that amount required  
20 by the laws of the state of the title insurer's former state of  
21 domicile as of the date of transfer of domicile. Thereafter, the  
22 aggregate of such statutory or unearned premium reserve shall be  
23 released from the reserve and restored to profits over a period  
24 of twenty years pursuant to the formula set forth in subdivision  
25 ~~(3)(b)(vi)~~ (3)(c)(iii) of this section.

1           (ii) Following the transfer of domicile to this state  
2 of the title insurer described in subdivision (3)(c)(i) of this  
3 section, for business written after the date of transfer of  
4 domicile, the title insurer shall add to and set aside in the  
5 statutory or unearned premium reserve such amount as provided in  
6 subdivision ~~(3)(b)(v)~~ (3)(b)(i) of this section.

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

14           ~~(A) Direct premiums written;~~

15           ~~(B) Escrow, settlement, and closing fees;~~

16           ~~(C) Other title fees and service charges, including fees~~  
17 ~~for closing protection letters; and~~

18           ~~(D) Premiums for reinsurance assumed less premiums for~~  
19 ~~reinsurance ceded.~~

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



1           ~~(A) For each title insurance policy on a single risk~~  
2 ~~written or assumed on or after January 1, 1999, and until December~~  
3 ~~31, 2005, twenty-five cents per one thousand dollars of net~~  
4 ~~retained liability for title insurance policies under five hundred~~  
5 ~~thousand dollars and twelve cents per one thousand dollars of net~~  
6 ~~retained liability for title insurance policies of five hundred~~  
7 ~~thousand dollars or greater, and~~

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

11           ~~(v) Out of total charges for title insurance policies~~  
12 ~~written or assumed on or after January 1, 2006, a title insurer~~  
13 ~~shall add to and set aside in the reserve required under~~  
14 ~~subdivision (3)(b)(i) of this section an amount equal to seventeen~~  
15 ~~cents per one thousand dollars of net retained liability for each~~  
16 ~~title insurance policy.~~

17           ~~(vi) (iii) The aggregate of the amounts set aside in~~  
18 ~~the reserve required under subdivision (3)(b)(i) (3)(c)(i) of this~~  
19 ~~section in any calendar year pursuant to subdivisions (3)(b)(iii),~~  
20 ~~(3)(b)(iv), and (3)(b)(v) of this section and the reserve required~~  
21 ~~under subdivision (3)(b)(ii) of this section shall be released~~  
22 ~~from the reserve and restored to net profits over a period of~~  
23 ~~twenty years pursuant to the following formula: For an insurer that~~  
24 ~~transfers its domicile to this state, An initial release of thirty~~  
25 ~~percent of the aggregate of such reserves on the forty-fifth day~~

1 following the last day of the calendar quarter in which the insurer  
2 transfers its domicile; ~~and thereafter pursuant to the formula as~~  
3 ~~set forth in this subdivision, and for all other insurers, thirty~~  
4 ~~percent of the aggregate sum on July 1 of the year next succeeding~~  
5 ~~the year of addition, fifteen percent of the aggregate sum on July~~  
6 ~~1 of in the next succeeding year; ten percent of the aggregate~~  
7 ~~sum on July 1 of in each of the next succeeding two years; five~~  
8 ~~percent of the aggregate sum on July 1 of in each of the next~~  
9 ~~succeeding two years; three percent of the aggregate sum on July~~  
10 ~~1 of in each of the next succeeding two years; two percent of the~~  
11 ~~aggregate sum on July 1 of in each of the next succeeding seven~~  
12 ~~years; and one percent of the aggregate sum on July 1 of in each~~  
13 ~~of the next succeeding five years. For each year in which a release~~  
14 ~~of statutory or unearned premium reserve is authorized under this~~  
15 ~~subdivision, such reserve shall be released over the course of~~  
16 ~~the year in twelve equal monthly amounts, beginning on July 1. No~~  
17 ~~release of statutory or unearned premium reserve shall occur if~~  
18 ~~such release would result in the aggregate reserve falling below~~  
19 ~~the actuarial level required by subsection (1) of this section.~~

20           ~~(vii) The title insurer shall calculate an adjusted~~  
21 ~~statutory or unearned premium reserve as of September 13, 1997.~~  
22 ~~The adjusted reserve shall be calculated as if subdivisions~~  
23 ~~(3)(b)(iii), (iv), and (vi) of this section had been in effect~~  
24 ~~for all years beginning twenty years prior to September 13, 1997.~~  
25 ~~For purposes of this calculation, the balance of the reserve as~~

1 of that date shall be deemed to be zero. If the adjusted reserve  
 2 so calculated exceeds the aggregate amount set aside for statutory  
 3 or unearned premiums in the title insurer's annual statement on  
 4 file with the director on September 13, 1997, the title insurer  
 5 shall, out of total charges for title insurance policies, increase  
 6 its statutory or unearned premium reserve by an amount equal to  
 7 one-sixth of that excess in each of the succeeding six years,  
 8 commencing with the calendar year that includes September 13, 1997,  
 9 until the entire excess has been added.

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

18	Calendar Year of Addition	Release
19	1998	Equally over 10 years
20	1999	Equally over 9 years
21	2000	Equally over 8 years
22	2001	Equally over 7 years
23	2002	Equally over 6 years
24	2003	Equally over 5 years

25 (4) A title insurer shall establish and maintain a

1 supplemental reserve consisting of any other reserves necessary,  
2 when taken in combination with the reserves required by subsections  
3 (2) and (3) of this section, to cover the title insurer's  
4 liabilities with respect to all losses, claims, and loss adjustment  
5 expenses. ~~The supplemental reserve required under this subsection~~  
6 ~~shall be phased in as follows: Twenty-five percent of the otherwise~~  
7 ~~applicable supplemental reserve will be required until December~~  
8 ~~31, 1998; fifty percent of the otherwise applicable supplemental~~  
9 ~~reserve will be required until December 31, 1999; and seventy-five~~  
10 ~~percent of the otherwise applicable supplemental reserve will be~~  
11 ~~required until December 31, 2000.~~

12 (5) Each title insurer subject to the Title Insurers  
13 Act shall file with its annual financial statement required under  
14 section 44-322 a certification by a member in good standing of the  
15 American Academy of Actuaries. The actuarial certification required  
16 of a title insurer shall conform to the National Association of  
17 Insurance Commissioners' annual statement instructions for title  
18 insurers.

19 Sec. 5. Section 44-4065, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 44-4065 (1) An insurance producer shall report to the  
22 director any administrative action taken against the producer  
23 in another jurisdiction, by a professional self-regulatory  
24 organization such as the Financial Industry Regulatory Authority or  
25 a similar organization, or by another governmental agency ~~in this~~

1 ~~state~~ within thirty days of the final disposition of the matter.  
2 This report shall include a copy of the order, consent to order,  
3 or other relevant legal documents.

4 (2) An insurance producer shall report to the director  
5 any obligation regarding insurance premiums or fiduciary funds  
6 owed to a company, including a premium finance company, or  
7 a managing general agent within thirty days of the date of  
8 discharge or attempt to discharge such obligation in a personal or  
9 organizational bankruptcy proceeding.

10 ~~(2)~~ (3) Within thirty days of the date of arraignment or  
11 date of waiver of arraignment, if waived, an insurance producer  
12 shall report to the director any criminal prosecution of the  
13 producer taken in any jurisdiction. The report shall include a  
14 copy of the initial complaint filed, the order resulting from the  
15 hearing, and any other relevant legal documents.

16 (4) For purposes of this section, administrative action  
17 shall include, but not be limited to, any arbitration or mediation  
18 award, disciplinary action, civil action, or sanction taken against  
19 or involving an insurance producer.

20 Sec. 6. Section 44-5103, Revised Statutes Cumulative  
21 Supplement, 2008, is amended to read:

22 44-5103 For purposes of the Insurers Investment Act:

23 (1) Admitted assets means the investments authorized  
24 under the act and stated at values at which they are permitted  
25 to be reported in the insurer's financial statement filed under

1 section 44-322, except that admitted assets does not include assets  
2 of separate accounts, the investments of which are not subject to  
3 the act;

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

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

23 (4) Clearing corporation means a clearing corporation as  
24 defined in subdivision (a)(5) of section 8-102, Uniform Commercial  
25 Code, that is organized for the purpose of effecting transactions

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

11 (5) Custodian means:

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

1 business therein, custodian may include a bank or trust company  
2 incorporated or organized under the laws of a country other than  
3 the United States that is regulated as such by that country's  
4 government or an agency thereof that shall at all times during  
5 which it acts as a custodian pursuant to the Insurers Investment  
6 Act be no less than adequately capitalized as determined by the  
7 standards adopted by international banking authorities and that is  
8 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. 7. Section 44-5223, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 44-5223 Sections 44-5223 to 44-5267 and section 9 of this  
7 act shall be known and may be cited as the Small Employer Health  
8 Insurance Availability Act.

9 Sec. 8. Section 44-5225, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 44-5225 For purposes of the Small Employer Health  
12 Insurance Availability Act, the definitions found in sections  
13 44-5226 to 44-5255.01 and section 9 of this act shall be used.

14 Sec. 9. Bona fide association means, with respect to  
15 health insurance coverage offered in this state, an association  
16 that meets the following conditions:

17 (1) Has been actively in existence for at least five  
18 years;

19 (2) Has been formed and maintained in good faith for  
20 purposes other than obtaining insurance;

21 (3) Does not condition membership in the association  
22 on a health-status-related factor of an individual, including an  
23 employee or a dependent of any employee;

24 (4) Makes health insurance coverage offered through  
25 the association available to any member regardless of a

1 health-status-related factor of the member or individual eligible  
2 for coverage through a member; and

3 (5) Does not make available health insurance coverage  
4 offered through the association other than in connection with a  
5 member of the association.

6 Sec. 10. Section 44-5260, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 44-5260 (1) For purposes of this section, small employer  
9 shall mean, in connection with a group health plan with respect to  
10 a calendar year and a plan year, any person, firm, corporation,  
11 partnership, association, or political subdivision that is actively  
12 engaged in business that employed an average of at least two but  
13 not more than fifty employees on business days during the preceding  
14 calendar year and who employs at least two employees on the first  
15 day of the plan year. All persons treated as a single employer  
16 under subsection (b), (c), (m), or (o) of section 414 of the  
17 Internal Revenue Code shall be treated as one employer. Subsequent  
18 to the issuance of a health benefit plan to a small employer  
19 and for the purpose of determining continued eligibility, the  
20 size of a small employer shall be determined annually. Except as  
21 otherwise specifically provided, provisions of the Small Employer  
22 Health Insurance Availability Act that apply to a small employer  
23 shall continue to apply at least until the health benefit plan  
24 anniversary following the date the small employer no longer meets  
25 the requirements of this definition. In the case of an employer

1 which was not in existence throughout the preceding calendar year,  
2 the determination of whether the employer is a small or large  
3 employer shall be based on the average number of employees that it  
4 is reasonably expected the employer will employ on business days in  
5 the current calendar year. Any reference in the act to an employer  
6 shall include a reference to any predecessor of such employer.

7 (2) (a) Every small employer carrier shall, as a condition  
8 of transacting business in this state with small employers,  
9 actively offer to small employers all health benefit plans it  
10 actively markets to small employers in this state, including at  
11 least two health benefit plans. One health benefit plan offered  
12 by each small employer carrier shall be a basic health benefit  
13 plan, and one plan shall be a standard health benefit plan. A  
14 small employer carrier shall be considered to be actively marketing  
15 a health benefit plan if it offers that plan to any small  
16 employer not currently receiving a health benefit plan by such  
17 small employer carrier. This subdivision shall not require a small  
18 employer carrier to offer to small employers a health benefit plan  
19 marketed only through a bona fide association.

20 (b) (i) Subject to subdivision (2) (a) of this section,  
21 a small employer carrier shall issue any health benefit plan to  
22 any eligible small employer that applies for the plan and agrees  
23 to make the required premium payments and to satisfy the other  
24 reasonable provisions of the health benefit plan not inconsistent  
25 with the Small Employer Health Insurance Availability Act. However,

1 no small employer carrier shall be required to issue a health  
2 benefit plan to a self-employed individual who is covered by, or is  
3 eligible for coverage under, a health benefit plan offered by an  
4 employer.

5 (ii) In the case of a small employer carrier that  
6 establishes more than one class of business, the small employer  
7 carrier shall maintain and issue to eligible small employers at  
8 least one basic health benefit plan and at least one standard  
9 health benefit plan in each class of business so established. A  
10 small employer carrier may apply reasonable criteria in determining  
11 whether to accept a small employer into a class of business if:

12 (A) The criteria are not intended to discourage or  
13 prevent acceptance of small employers applying for a basic health  
14 benefit plan or a standard health benefit plan;

15 (B) The criteria are not related to the health status or  
16 claim experience of employees or dependents of the small employer;

17 (C) The criteria are applied consistently to all small  
18 employers applying for coverage in the class of business; and

19 (D) The small employer carrier provides for the  
20 acceptance of all eligible small employers into one or more classes  
21 of business.

22 The provisions of subdivision (2)(b)(ii) of this section  
23 shall not apply to a class of business into which the small  
24 employer carrier is no longer enrolling new small businesses.

25 (3)(a) A small employer carrier shall file with the

1 director, in a format and manner prescribed by the director, the  
2 basic health benefit plans and the standard health benefit plans  
3 to be used by the carrier. A health benefit plan filed pursuant to  
4 this subsection may be used by a small employer carrier beginning  
5 thirty days after it is filed unless the director disapproves its  
6 use.

7 (b) The director at any time may, after providing notice  
8 and an opportunity for a hearing to the small employer carrier,  
9 disapprove the continued use by a small employer carrier of a basic  
10 health benefit plan or standard health benefit plan on the grounds  
11 that the plan does not meet the requirements of the act.

12 (4) Health benefit plans covering small employers shall  
13 comply with the following provisions:

14 (a) A health benefit plan shall not deny, exclude,  
15 or limit benefits for a covered individual for losses incurred  
16 more than twelve months, or eighteen months in the case of a  
17 late enrollee, following the enrollment date of the individual's  
18 coverage due to a preexisting condition or the first date of  
19 the waiting period for enrollment if that date is earlier than  
20 the enrollment date. A health benefit plan shall not define  
21 a preexisting condition more restrictively than as defined in  
22 section 44-5246.02. A health benefit plan shall not impose  
23 any preexisting condition exclusion relating to pregnancy as a  
24 preexisting condition;

25 (b) A health benefit plan shall not impose any

1 preexisting condition exclusion:

2 (i) To an individual who, as of the last day of the  
3 thirty-day period beginning with the date of birth, is covered  
4 under creditable coverage, and the individual had creditable  
5 coverage that was continuous to a date not more than sixty-three  
6 days prior to the enrollment date of new coverage; or

7 (ii) To a child less than eighteen years of age who is  
8 adopted or placed for adoption and who, as of the last day of  
9 the thirty-day period beginning on the date of the adoption or  
10 placement for adoption, is covered under creditable coverage, and  
11 the child had creditable coverage that was continuous to a date  
12 not more than sixty-three days prior to the enrollment date of new  
13 coverage;

14 (c)(i) A small employer carrier shall waive any  
15 time period applicable to a preexisting condition exclusion or  
16 limitation period with respect to particular services in a health  
17 benefit plan for the aggregate period of time an individual was  
18 previously covered by creditable coverage that provided benefits  
19 with respect to such services if the creditable coverage was  
20 continuous to a date not more than sixty-three days prior to the  
21 enrollment date of new coverage. The period of continuous coverage  
22 shall not include any waiting period or affiliation period for the  
23 effective date of the new coverage applied by the employer or the  
24 carrier. This subdivision shall not preclude application of any  
25 waiting period applicable to all new enrollees under the health

1 benefit plan.

2 (ii) A small employer carrier that does not use  
3 preexisting condition limitations in any of its health benefit  
4 plans may impose an affiliation period:

5 (A) That does not exceed sixty days for new entrants and  
6 does not exceed ninety days for late enrollees;

7 (B) During which the carrier charges no premiums and the  
8 coverage issued is not effective; and

9 (C) That is applied uniformly, without regard to any  
10 health-status-related factor.

11 (iii) This subdivision does not preclude application of  
12 any waiting period applicable to all enrollees under the health  
13 benefit plan if any carrier waiting period is no longer than sixty  
14 days.

15 (iv) (A) In lieu of the requirements of subdivision  
16 (4) (c) (i) of this section, a small employer carrier may elect to  
17 reduce the period of any preexisting condition exclusion based on  
18 coverage of benefits within each of several classes or categories  
19 of benefits specified in federal regulations.

20 (B) A small employer electing to reduce the period of  
21 any preexisting condition exclusion using the alternative method  
22 described in subdivision (4) (c) (iv) (A) of this section shall make  
23 the election on a uniform basis for all enrollees and count a  
24 period of creditable coverage with respect to any class or category  
25 of benefits if any level of benefits is covered within the class or



1 category.

2 (C) A small employer carrier electing to reduce the  
3 period of any preexisting condition exclusion using the alternative  
4 method described in subdivision (4) (c) (iv) (A) of this section shall  
5 prominently state that the election has been made in any disclosure  
6 statements concerning coverage under the health benefit plan to  
7 each enrollee at the time of enrollment under the plan and to each  
8 small employer at the time of the offer or sale of the coverage and  
9 include in the disclosure statements the effect of the election;

10 (d) (i) A small employer carrier shall permit an eligible  
11 employee or dependent, who requests enrollment following the open  
12 enrollment opportunity, to enroll, and the eligible employee or  
13 dependent shall not be considered a late enrollee if the eligible  
14 employee or dependent:

15 (A) Was covered under another health benefit plan at the  
16 time the eligible employee or dependent was eligible to enroll;

17 (B) Stated in writing at the time of the open enrollment  
18 period that coverage under another health benefit plan was the  
19 reason for declining enrollment but only if the health benefit plan  
20 or health carrier required such a written statement and provided a  
21 notice of the consequences of such written statement;

22 (C) Has lost coverage under another health benefit plan  
23 as a result of the termination of employment, the termination of  
24 the other health benefit plan's coverage, death of a spouse, legal  
25 separation, or divorce or was under a continuation-of-coverage

1 policy or contract available under federal law and the coverage was  
2 exhausted; and

3 (D) Requests enrollment within thirty days after the  
4 termination of coverage under the other health benefit plan.

5 (ii)(A) If a small employer carrier issues a health  
6 benefit plan and makes coverage available to a dependent of an  
7 eligible employee and such dependent becomes a dependent of the  
8 eligible employee through marriage, birth, adoption, or placement  
9 for adoption, then such health benefit plan shall provide for a  
10 dependent special enrollment period during which the dependent may  
11 be enrolled under the health benefit plan and, in the case of the  
12 birth or adoption of a child, the spouse of an eligible employee  
13 may be enrolled if otherwise eligible for coverage.

14 (B) A dependent special enrollment period shall be a  
15 period of not less than thirty days and shall begin on the later of  
16 (I) the date such dependent coverage is available or (II) the date  
17 of the marriage, birth, adoption, or placement for adoption.

18 (C) If an eligible employee seeks to enroll a dependent  
19 during the first thirty days of such a dependent special enrollment  
20 period, the coverage of the dependent shall become effective:

21 (I) In the case of marriage, not later than the first day  
22 of the first month beginning after the date the completed request  
23 for enrollment is received;

24 (II) In the case of the birth of a dependent, as of the  
25 date of birth; and

1 (III) In the case of a dependent's adoption or placement  
2 for adoption, the date of such adoption or placement for adoption;

3 (e) (i) Except as provided in subdivision (4) (e) (iv) of  
4 this section, requirements used by a small employer carrier in  
5 determining whether to provide coverage to a small employer,  
6 including requirements for minimum participation of eligible  
7 employees and minimum employer contributions, shall be applied  
8 uniformly among all small employers with the same number of  
9 eligible employees applying for coverage or receiving coverage from  
10 the small employer carrier.

11 (ii) A small employer carrier may vary application  
12 of minimum participation requirements and minimum employer  
13 contribution requirements only by the size of the small employer  
14 group.

15 (iii) (A) Except as provided in subdivision (4) (e) (iii) (B)  
16 of this section, in applying minimum participation requirements  
17 with respect to a small employer, a small employer carrier shall  
18 not consider employees or dependents who have creditable coverage  
19 in determining whether the applicable percentage of participation  
20 is met.

21 (B) With respect to a small employer with ten or fewer  
22 eligible employees, a small employer carrier may consider employees  
23 or dependents who have coverage under another health benefit plan  
24 sponsored by such small employer in applying minimum participation  
25 requirements.

1           (iv) A small employer carrier shall not increase any  
2 requirement for minimum employee participation or any requirement  
3 for minimum employer contribution applicable to a small employer at  
4 any time after the small employer has been accepted for coverage;  
5 and

6           (f)(i) If a small employer carrier offers coverage to  
7 a small employer, the small employer carrier shall offer coverage  
8 to all of the eligible employees of a small employer and their  
9 dependents who apply for enrollment during the period in which the  
10 employee first becomes eligible to enroll under the terms of the  
11 plan. A small employer carrier shall not offer coverage to only  
12 certain individuals in a small employer group or to only part of  
13 the group except in the case of late enrollees as provided in  
14 subdivision (4)(a) of this section.

15           (ii) Except as permitted under subdivisions (a) and (d)  
16 of this subsection, a small employer carrier shall not modify  
17 a health benefit plan with respect to a small employer or any  
18 eligible employee or dependent, through riders, endorsements, or  
19 otherwise, to restrict or exclude coverage or benefits for specific  
20 diseases, medical conditions, or services otherwise covered by the  
21 plan.

22           (iii) A small employer carrier shall not place any  
23 restriction in regard to any health-status-related factor on an  
24 eligible employee or dependent with respect to enrollment or plan  
25 participation.

1           (5) A small employer carrier shall not be required to  
2 offer coverage or accept applications pursuant to subsection (2) of  
3 this section in the case of the following:

4           (a) To an employee if previous basic health benefit plans  
5 or standard health benefit plans have, in the aggregate, paid one  
6 million dollars in benefits on behalf of the employee. Benefits  
7 paid on behalf of the employee in the immediately preceding two  
8 calendar years by prior small employer carriers under basic and  
9 standard plans shall be included when calculating the lifetime  
10 maximum benefits payable under the succeeding basic or standard  
11 plans. In any situation in which a determination of the total  
12 amount of benefits paid by prior small employer carriers is  
13 required by the succeeding carrier, prior carriers shall furnish a  
14 statement of the total benefits paid under basic and standard plans  
15 at the succeeding carrier's request; or

16           (b) Within an area where the small employer carrier  
17 reasonably anticipates, and demonstrates to the satisfaction of the  
18 director, that it will not have the capacity within its established  
19 geographic service area to deliver service adequately to the  
20 members of such groups because of its obligations to existing group  
21 policyholders and enrollees.

22           (6) (a) A small employer carrier offering coverage through  
23 a network plan shall not be required to offer coverage or accept  
24 applications pursuant to subsection (2) of this section to or from  
25 a small employer as defined in subsection (1) of this section:

1           (i) If the small employer does not have eligible  
2 employees who live, work, or reside in the service area for  
3 such network plan; or

4           (ii) If the small employer does have eligible employees  
5 who live, work, or reside in the service area for such network  
6 plan, the carrier has demonstrated, if required, to the director  
7 that it will not have the capacity to deliver services adequately  
8 to enrollees of any additional groups because of its obligations  
9 to existing group contract holders and enrollees and that it  
10 is applying subdivision (6)(a)(ii) of this section uniformly  
11 to all employers without regard to the claims experience of  
12 those employers and their employees and their dependents or  
13 any health-status-related factor relating to such employees and  
14 dependents.

15           (b) A small employer carrier, upon denying health  
16 insurance coverage in any service area in accordance with  
17 subdivision (6)(a)(ii) of this section, shall not offer coverage in  
18 the small employer market within such service area for a period of  
19 one hundred eighty days after the date such coverage is denied.

20           (7) A small employer carrier shall not be required to  
21 provide coverage to small employers pursuant to subsection (2)  
22 of this section for any period of time for which the director  
23 determines that requiring the acceptance of small employers in  
24 accordance with the provisions of such subsection would place the  
25 small employer carrier in a financially impaired condition.

1           Sec. 11. Section 44-5904, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           44-5904 (1) The director or any of his or her examiners  
4 may conduct an examination under the Insurers Examination Act of  
5 any company incorporated in this state or in any other state  
6 or country admitted to or applying for admission to transact  
7 business in this state as often as the director in his or her  
8 sole discretion deems appropriate but shall at a minimum conduct  
9 an examination of every domestic insurer not less frequently than  
10 once every ~~four~~ five years. In scheduling and determining the  
11 nature, scope, and frequency of the examination of a company, the  
12 director shall consider such matters as the results of financial  
13 statement analyses and ratios, changes in the company's management  
14 or ownership, actuarial opinions, reports of independent certified  
15 public accountants, the company's ability to meet and fulfill its  
16 obligations, the company's compliance with provisions of law, other  
17 facts relating to the company's business methods, the company's  
18 management and its dealings with its policyholders, and other  
19 criteria as set forth in the Examiners' Handbook adopted by the  
20 National Association of Insurance Commissioners and in effect when  
21 the director conducts an examination under this section.

22           (2) For purposes of completing an examination of any  
23 company under the act, the director may examine or investigate any  
24 person, or the business of any person, insofar as such examination  
25 or investigation is, in the sole discretion of the director,

1 necessary or material to the examination of the company.

2           Sec. 12. Section 44-5905, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           44-5905 (1) Upon determining that an examination should  
5 be conducted, the director or his or her designee shall appoint one  
6 or more examiners to conduct the examination and instruct them as  
7 to the scope of the examination. In conducting the examination, the  
8 examiner shall observe those guidelines and procedures set forth  
9 in the Examiners' Handbook adopted by the National Association of  
10 Insurance Commissioners. The director may also employ such other  
11 guidelines or procedures as the director may deem appropriate.

12           (2)(a) Every company or person from whom information is  
13 sought and its officers, directors, employees, and agents shall  
14 provide to the examiners appointed under subsection (1) of this  
15 section timely, convenient, and free access to all books, records,  
16 accounts, papers, documents, and computer or other recordings  
17 relating to the property, assets, business, and affairs of the  
18 company being examined.

19           (b)(i)(A) Every company or person subject to the Insurers  
20 Examination Act shall retain all books, records, accounts, papers,  
21 documents, and computer or other recordings relating to the  
22 property, assets, financial accounts, and business of such company  
23 or person in a manner that permits examination of such books,  
24 records, accounts, papers, documents, and computer or other  
25 recordings for ~~four~~ five years, or until the period of time



1 in which the transaction took place has undergone a financial  
2 examination by the director, whichever is later, following the  
3 completion of a transaction relating to the property, assets,  
4 financial accounts, and business of such company or person.

5 (B) Every company or person subject to the act shall  
6 retain market conduct records for ~~four~~ five years following  
7 the completion of a transaction relating to the insurance  
8 business and affairs of such company or person. For purposes  
9 of this subdivision, market conduct records means all books,  
10 records, accounts, papers, documents, and computer or other  
11 recordings relating to transactions with insureds, certificate  
12 holders, claimants, insurance producers, other insurers, subrogees,  
13 and subrogors and recordings related to its trade practices,  
14 underwriting, rate and form practices, advertising, regulatory  
15 matters, and other affairs of such company or person.

16 (ii) The books, records, accounts, papers, documents, and  
17 computer or other recordings described in subdivisions (2) (b) (i) (A)  
18 and (B) of this section and maintained in electronic, computer,  
19 micrographic, or other form shall be maintained in a form capable  
20 of accurate duplication on paper.

21 (c) The officers, directors, employees, and agents of the  
22 company or person shall facilitate the examination and aid in the  
23 examination so far as it is in their power to do so. The refusal  
24 of any company, by its officers, directors, employees, or agents,  
25 to submit to examination or to comply with any reasonable written

1 request of the examiners shall be grounds for suspension or refusal  
2 of or nonrenewal of any license or authority held by the company to  
3 engage in an insurance or other business subject to the director's  
4 jurisdiction. Any such proceedings for suspension, revocation, or  
5 refusal of any license or authority shall be conducted pursuant to  
6 the Administrative Procedure Act.

7 (d) For purposes of this subsection, officers, directors,  
8 employees, and agents shall include general agents, managing  
9 agents, attorneys in fact, organizers, promoters, loss adjusters,  
10 and any persons having a contract, written or oral, pertaining to  
11 the management or control of a company or any function thereof.

12 (3) The director or any of his or her examiners shall  
13 have the power to issue subpoenas, to administer oaths, and to  
14 examine under oath any person as to any matter pertinent to  
15 the examination. Upon the failure or refusal of any person to  
16 obey a subpoena, the director may petition a court of competent  
17 jurisdiction, and upon proper showing, the court may enter an  
18 order compelling the witness to appear and testify or produce  
19 documentary evidence. Failure to obey the court order shall be  
20 punishable as contempt of court. Every person shall be obliged to  
21 attend as a witness at the place specified in the subpoena, when  
22 subpoenaed, anywhere within the state. He or she shall be entitled  
23 to the same fees and mileage, if claimed, as a witness in the  
24 district court with mileage to be computed at the rate provided in  
25 section 81-1176, which fees, mileage, and actual expense, if any,

1 necessarily incurred in securing the attendance of witnesses, and  
2 their testimony, shall be itemized and charged against, and be paid  
3 by, the company being examined.

4 (4) When conducting an examination under the Insurers  
5 Examination Act, the director may retain attorneys, appraisers,  
6 independent actuaries, independent certified public accountants,  
7 loss-reserve specialists, or other professionals and specialists,  
8 the cost of which shall be borne by the company which is the  
9 subject of the examination.

10 (5) Nothing in the act shall be construed to limit the  
11 director's authority to terminate or suspend any examination in  
12 order to pursue other legal or regulatory action pursuant to the  
13 insurance laws of this state. Findings of fact and conclusions made  
14 pursuant to any examination shall be prima facie evidence in any  
15 legal or regulatory action.

16 (6) Nothing contained in the act shall be construed to  
17 limit the director's authority to use and, if appropriate, to make  
18 public any final or preliminary examination report, any examiner  
19 or company workpapers or other documents, or any other information  
20 discovered or developed during the course of any examination in the  
21 furtherance of any legal or regulatory action which the director  
22 may, in his or her sole discretion, deem appropriate.

23 Sec. 13. Original sections 12-1116, 44-710.03, 44-710.04,  
24 44-4065, 44-5223, 44-5225, 44-5260, 44-5904, and 44-5905, Reissue  
25 Revised Statutes of Nebraska, and sections 44-1988 and 44-5103,

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1 Revised Statutes Cumulative Supplement, 2008, are repealed.