

LEGISLATIVE BILL 234

Approved by the Governor March 15, 1973

Introduced by Fellman, 4

AN ACT to amend section 44-1901, Reissue Revised Statutes of Nebraska, 1943, and section 44-201, Revised Statutes Supplement, 1972, relating to insurance; to redefine title insurance; and to repeal the original sections.

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

Section 1. That section 44-201, Revised Statutes Supplement, 1972, be amended to read as follows:

44-201. An insurance corporation may be formed for the following purposes:

(1) FIRE MARINE--(a) To make insurance upon property, or any valuable interest therein, against loss or damage caused by fire, lightning or other electrical disturbances, earthquake, windstorm, cyclone, tornado, tempest, hail, frost, snow, ice, sleet, weather, or climatic condition, including excess or deficiency of moisture, flood, rain, or drought; a rising of the waters of the ocean or its tributaries; bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion, other than the explosion of steam boilers, or the breaking of engines, turbines, flywheels or electrical machinery on the premises insured; against loss or damage from any cause to trees, crops, and farm products; (b) to make insurance against loss or damage to property and against the liability of the insured for loss or damage to the property of others caused by smoke and smudge, or by water entering through leaks or openings in buildings or from the breakage or leakage of sprinklers, pumps, water pipes, plumbing, and all tanks, apparatus, conduits, and containers designed to bring water into buildings or for its storage or utilization therein, or caused by the falling of a tank, tank platform or supports, and against loss or damage from any cause to such sprinklers, pumps, water pipes, plumbing, tanks, apparatus, conduits, or containers; (c) to make insurance upon teams, farm tractors, farm machinery, and other equipment, airplanes, seaplanes, dirigibles, and other aircraft (i) against all loss or damage to the same, their fittings and contents, from any cause, including the hazards of burglary, theft, or other criminal act, vandalism or malicious mischief, or (ii) against loss or damage to property, including legal

liability therefor, caused by the operation, maintenance, and use of the same; (d) to make insurance against loss or damage to vessels, craft, aircraft, automobiles, and vehicles of every kind as well as goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to, or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas, or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incidental thereto; including marine builders' risks and war risks; and from loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit or transportation insurance, including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such primary insurance, but not including life insurance or surety bonds; but, except as herein specified, shall not mean insurance against loss by reason of bodily injury to the person; (e) against consequential loss or damage arising from any of the causes above enumerated; (f) against loss or damage to horses, cattle, other livestock, and domestic animals, by accident, theft, or death, or against any known or contingent event whatever, which may lawfully be the subject of insurance; and (g) against other loss or damage to property not prohibited by law or contrary to public policy to be determined by the Department of Insurance;

(2) LIFE INSURANCE--Upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits;

(3) SICKNESS AND ACCIDENT INSURANCE--Against loss or expense resulting from the sickness of the insured, or from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto, including quarantine;

(4) FIDELITY INSURANCE--Guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; or guaranteeing and executing all bonds, undertakings, and contracts of suretyship;

(5) LIABILITY INSURANCE--Against loss or damage resulting from accident to, or injury, fatal or nonfatal,

suffered by an employee or other person for which the insured is liable;

(6) PLATE GLASS INSURANCE--Against breakage of glass, whether local or in transit;

(7) BOILER AND MACHINE INSURANCE--Upon steam boilers and upon pipes, engines, and machinery connected therewith and operated thereby, against explosion and accident, and against loss or damage to life, person, or property resulting therefrom;

(8) BURGLARY INSURANCE--Against loss by burglary, housebreaking, or theft;

(9) VARIABLE ANNUITIES--Policies issued on an individual or group basis by which an insurer promises to pay a variable sum of money either in a lump sum, or periodically for life or for some other specified period;

(10) CREDIT INSURANCE--Guaranteeing either by agreement to purchase uncollectible debts, or otherwise to insure against loss or damage from the failure of persons indebted to or to become indebted to the insured, or to meet existing or contemplated liabilities;

(11) TITLE INSURANCE--(a) Insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property;

(b) Insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurance company the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property;

(12) AUTOMOBILE, ENGINE, ELEVATOR INSURANCE--Against any hazard resulting from the ownership, operation, maintenance or use of any automobile, and against loss or legal liability for loss resulting from accident or injury to person or persons,

fatal or nonfatal, because of damage to property caused by the use of teams or vehicles, whether by fire, accident, collision, or by the explosion of any engine, tank, boiler, pipe, or tire of any vehicle, and against all loss or damage to vehicles, their fittings and contents, from any cause, including the hazards of burglary, theft or other criminal act, vandalism or malicious mischief; and the term vehicle, as herein used, includes in addition to its ordinary meaning, elevators, automobiles, traction engines, motorcycles and bicycles, but does not include ships, vessels, boats, or railroad rolling stock; or

(13) MISCELLANEOUS INSURANCE--Upon any risk not included within any of the foregoing classes and which is a proper subject for insurance, not prohibited by law or contrary to sound public policy, to be determined by the Department of Insurance.

Sec. 2. That section 44-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1901. As used in sections 44-1901 to 44-1917, unless the context otherwise requires:

(1) Title insurance shall mean; ~~insuring;~~

~~(a) Insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of title to such real property, or adverse claim to title in real property, with reasonable examination to title guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property; ;-or-doing~~

~~(b) Insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurance company the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property; or~~

~~(c) Doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of sections 44-1901 to 44-1917;~~

(2) Business of title insurance shall mean (a) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (b) the transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (c) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of sections 44-1901 to 44-1917;

(3) Title insurance company shall mean any domestic company organized under the provisions of Chapter 44 for the purpose of ~~insuring--titles--to--real property~~ issuing policies or contracts of title insurance, any title insurance company organized under the laws of another state or foreign government and licensed to ~~insure--titles--to--real-estate~~ issue policies or contracts of title insurance within the state pursuant to the provisions of Chapter 44 and any domestic or foreign company having the power and authorized to ~~insure titles-to-real-estate~~ issue policies or contracts of title insurance within this state;

(4) Applicants for insurance shall include all those, whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance, and who at the time of such application are not agents for a title insurance company;

(5) Risk premium for title insurance shall mean that portion of the fee charged to an insured or to an applicant for insurance, for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy;

(6) Fee for title insurance shall mean and include the risk premium, searching charge, and every other charge, exclusive of settlement, closing or escrow charges, whether denominated premium or otherwise made by a title insurance company or agent of a title insurance company or either of them, to an insured or to an applicant for insurance, for any policy or contract for the issuance of title insurance, but the term fee shall not include any charges paid to and retained by an attorney at law or abstractor acting as an independent contractor whether or not he is acting as an agent of a title insurance company or any charges made for special services not constituting title insurance, even though

performed in connection with a title insurance policy or contract;

(7) Single insurance risk shall mean the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event shall mean the sum of the insured amounts of all such policies or contracts. Any policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk;

(8) Net retained liability shall mean the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with subdivision (7) of this section, after the purchase of reinsurance; and

(9) Title insurance agent shall mean an agent as defined in section 44-328 who is engaged in the business of selling title insurance as defined in subdivision (1) of this section.

Sec. 3. That original sections 44-1901, Reissue Revised Statutes of Nebraska, 1943, and section 44-201, Revised Statutes Supplement, 1972, are repealed.