

## LEGISLATIVE BILL 984

Approved by the Governor February 24, 1990

Introduced by Banking, Commerce and Insurance  
Committee, Landis, 46, Chairperson;  
Schmit, 23; Weihing, 48; Lynch, 13;  
Abboud, 12; Wesely, 26

AN ACT relating to insurance; to amend sections 44-3903, 44-4010, 44-4802, 44-4803, 44-4806, 44-4809, 44-4810, 44-4812, and 44-4854, Revised Statutes Supplement, 1989; to change provisions relating to continuing education for certain licensees; to provide for an agent's license without examination for certain real estate brokers and salespersons; to define, redefine, and eliminate certain terms; to eliminate certain nonprofit service plans and beneficial societies from proceedings authorized by the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; to change provisions relating to penalties, director's orders, seizure orders, ancillary summary proceedings, and grounds for rehabilitation under such act; to harmonize provisions; to eliminate a provision relating to losses paid by a ceding insurer; and to repeal the original sections, and also section 44-419, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 44-3903, Revised Statutes Supplement, 1989, be amended to read as follows:

44-3903. Sections 44-3901 to 44-3908 shall not apply to the following persons:

(1) Licensees for whom an examination is not required under the laws of this state, except that persons who are excused from the examination under subdivisions (2), (8), (9), and (11) and ~~(10)~~ of section 44-4010 shall not be exempt;

(2) Licensees who sell or consult only in the areas of credit life insurance and credit accident and health insurance; and

(3) Licensees holding such limited or restricted licenses as the director may exempt.

Sec. 2. That section 44-4010, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4010. The director shall issue an agent's license to the following persons without examination if such person meets all other license requirements:

- (1) Any applicant for a temporary license;
- (2) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in this state, other than a temporary license, within the thirty-six months preceding the date of application unless such previous license was revoked or suspended by the director;
- (3) Any insurance agency which is required to be licensed under the Insurance Producers Licensing Act;
- (4) Any ticket-selling agent of a common carrier who acts only with reference to the issuance of accident insurance or insurance on personal effects carried as baggage in connection with the transportation provided by such common carrier or any person selling limited travel insurance in transportation terminals;
- (5) Any person involved in insurance solicitation solely through enrollment of individuals under a group insurance policy;
- (6) Any applicant who only solicits or procures credit life or credit sickness and accident insurance in connection with a loan or a retail time-sales transaction;
- (7) Home office or branch office employees of insurers or of general agents who work with or through resident agents in the solicitation, negotiation, or effectuation of insurance and who are compensated by salary only;
- (8) Any officer, employee, or secretary of any fraternal benefit society who devotes substantially all of his or her time to activities other than the solicitation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited;
- (9) Any applicant for a license covering variable contracts who provides the director with a copy of his or her examination score indicating that he or she has successfully passed either the appropriate National Association of Securities Dealers or other national securities exchange examination; or
- (10) Any applicant who solicits, negotiates, or procures home protection insurance in connection with the sale of real estate and who at the time of such transaction is licensed as a real estate broker.

associate broker, or salesperson. For purposes of this subdivision, (a) home shall mean a single living unit or multiple living units, including mobile homes, used primarily as residences and (b) home protection insurance shall mean insurance which undertakes to perform or provide repair or replacement service or indemnification for such services for the operational or structural failure of the insured home, components of the home, or personal property relating to the home or its components and shall not include protection against consequential damage from the operational or structural failure; or

(11) Any person who solicits a kind of insurance that the director finds does not require an examination to demonstrate professional competency.

Sec. 3. That section 44-4802, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4802. The proceedings authorized by the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may be applied to:

(1) All insurers who are doing or have done an insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) All insurers who purport to do an insurance business in this state;

(3) All insurers who have insureds who are residents of this state;

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) All ~~nonprofit service plans and all fraternal benefit societies and beneficial societies~~ subject to Chapter 44, article 10;

(6) All title insurance companies subject to Chapter 44, article 19;

(7) All health maintenance organizations subject to the Model Health Maintenance Organization Act;

(8) All legal service insurance corporations subject to Chapter 44, article 33;

(9) All service companies subject to Chapter 44, article 35;

(10) All prepaid dental service corporations subject to Chapter 44, article 38; and

(11) All prepaid limited health service organizations subject to the Prepaid Limited Health Service Organization Act.

Sec. 4. That section 44-4803, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4803. For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

(1) Ancillary state shall mean any state other than a domiciliary state;

(2) Creditor shall mean a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;

(3) Delinquency proceeding shall mean any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 44-4809 or 44-4810;

(4) Department shall mean the Department of Insurance;

(5) Director shall mean the Director of Insurance;

(6) Doing business shall include any of the following acts, whether effected by mail or otherwise:

(a) The issuance or delivery of contracts of insurance to persons who are residents of this state;

(b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) The transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) Operating as an insurer under a license or certificate of authority issued by the department;

(7) Domiciliary state shall mean the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

(8) Fair consideration is given for property or an obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or

(b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or

obligation obtained;

(9) Foreign country shall mean any other jurisdiction not in any state;

(10) Foreign guaranty association shall mean a guaranty association now in existence in or hereafter created by the legislature of another state;

(11) Formal delinquency proceeding shall mean any liquidation or rehabilitation proceeding;

(12) General assets shall mean all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets shall include all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets;

(13) Guaranty association shall mean the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent shall mean:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities shall include, but not be limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of

admission or subsequent thereto;

(15) Insurer shall mean any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or an insurance the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 shall be deemed to be insurers;

(16) Person shall include any individual, corporation, partnership, association, trust, or other entity;

~~(17)~~ Preferred claim shall mean any claim with respect to which the terms of the net accord priority of payment from the general assets of the insurer;

(17) ~~(18)~~ Receiver shall mean receiver, liquidator, rehabilitator, or conservator as the context requires;

(18) ~~(19)~~ Reciprocal state shall mean any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(19) ~~(20)~~ Secured claim shall mean any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but shall not include a special deposit claim or a claim against general assets. The term shall also include claims which have become liens upon specific assets by reason of judicial process;

(20) ~~(21)~~ Special deposit claim shall mean any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but shall not include any claim secured by general assets;

(21) ~~(22)~~ State shall mean any state, district, or territory of the United States and the Panama Canal Zone; and

(22) ~~(23)~~ Transfer shall include the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally,

voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

Sec. 5. That section 44-4806, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4806. (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the director in any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or any investigation preliminary to the proceeding. For purposes of this section, the term person shall include any person who exercises control directly or indirectly over activities of the insurer through a management contract or any holding company or other affiliate of the insurer. To cooperate shall include, but shall not be limited to, the following:

(a) To reply promptly in writing to any inquiry from the director requesting such a reply; and

(b) To make available to the director any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) No person shall obstruct or interfere with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) Any person included within subsection (1) of this section who fails to cooperate with the director or any person who obstructs or interferes with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the director issued validly under the act shall be guilty of a Class I misdemeanor and ~~and~~ or may, after a hearing, be subject to the imposition by the director of a civil penalty not to exceed ten thousand dollars and shall be subject further to the revocation or suspension of any insurance licenses issued by the director.

Sec. 6. That section 44-4809, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4809. (1) Whenever the director has reasonable cause to believe and determines, after a hearing held under subsection (5) of this section, that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, he or she may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

(2) If upon examination or at any other time the director has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the director shall upon his or her determination by order:

(a) Notify the insurer of his or her determination; and

(b) Furnish to the insurer a written list of the director's requirements to abate his or her determination.

(3) If the director makes a determination to supervise an insurer subject to an order under subsection (1) or (2) of this section, he or she shall notify the insurer that it is under the supervision of the director. During the period of supervision, the director may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsection (1) or (2) of this section and may also require that the insurer not do any of the following things during the period of supervision without the prior approval of the director or the supervisor:

(a) Dispose of, convey, or encumber any of its assets or its business in force;

(b) Withdraw from any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

(f) Incur any debt, obligation, or liability;

(g) Merge or consolidate with another company;

(h) Enter into any new reinsurance contract or treaty; or

(i) Write or renew any insurance business.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the



director and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the director. In the event of such insurer's failure to comply within such period, the director may institute proceedings under section 44-4812 or 44-4817 to have a rehabilitator or liquidator appointed or may extend the period of supervision.

(5) A notice of hearing under subsection (1) of this section and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the Administrative Procedure Act. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the director would base his or her order. Unless mutually agreed between the director and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in the offices of the department or in some other place convenient to the parties to be designated by the director. The director shall hold all hearings under subsection (1) of this section privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6)(a) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. Such a hearing shall be held as provided in subsection (5) of this section, but the request for a hearing shall not stay the effect of the order.

(b) If the director issues an order under subsection (2) of this section, the insurer may, at any time, waive a director's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the director.

(7) During the period of supervision, the insurer may request the director to review an action taken or proposed to be taken by the supervisor, specifying why the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him or her was then still in effect, he or she shall be liable to pay a civil penalty imposed by the district court of Lancaster County not to exceed ten thousand dollars.

(9) The director may apply for and the court may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(10) In the event that any person subject to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, including those persons described in subsection (1) of section 44-4806, knowingly violates any valid order of the director issued under this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, such person shall become personally liable to the insurer for the amount of any such reduction or loss. The director or supervisor may bring an action on behalf of the insurer in the district court of Lancaster County to recover the amount of the reduction or loss together with any costs.

Sec. 7. That section 44-4810, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4810. (1) The director may file in the district court of Lancaster County a petition alleging, with respect to a domestic insurer:

(a) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act;

(b) That the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) The contents of an order deemed necessary by the director.

(2) Upon a filing under subsection (1) of this section, the court may issue, forthwith, ex parte, and without a hearing, the requested order which shall direct the director to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the director.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the director to ascertain the condition of the insurer. On motion of either party or

on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the director fails to commence a formal delinquency proceeding under the act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal delinquency proceeding under the act shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given to such person. An order that notice be given shall not stay the effect of any order previously issued by the court.

Sec. 8. That section 44-4812, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4812. The director may apply by petition to the district court of Lancaster County for an order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, its creditors, or the public;

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer;

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent,

employee, or other person, if the person has been found after notice and hearing by the director to be dishonest or untrustworthy in a way affecting the insurer's business;

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy;

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, or other person, has refused to be examined under oath or affirmation by the director concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all his or her influence on management;

(6) After demand by the director under section 44-108 or under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer;

(7) Without first obtaining the written consent of the director, the insurer has transferred or attempted to transfer, in a manner contrary to sections 44-224.01 to 44-224.10 or 44-2101 to 44-2119, substantially its entire property or business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under the act;

(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the director under section 44-4809;

(10) The insurer has failed to pay within sixty days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state if the court in which such judgment was entered had jurisdiction over such subject matter, except that such nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the director or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full;

(11) The insurer has failed to file its annual report or other financial report required by statute or by rule or regulation within the time allowed by law and, after written demand by the director, has failed to give an adequate explanation immediately; or

(12) The board of directors or the holders of a majority of the shares entitled to vote or a majority of those individuals entitled to the control of those entities listed in section 44-4802 requests or consents to rehabilitation under the act.

Sec. 9. That section 44-4854, Revised Statutes Supplement, 1989, be amended to read as follows:

44-4854. The director may institute proceedings under sections 44-4809 to 44-4811 at the request of the director, commissioner, or equivalent official of the ~~regulatory entity of the domiciliary~~ state of any foreign or alien insurer having property located in this state.

Sec. 10. That original sections 44-3903, 44-4010, 44-4802, 44-4803, 44-4806, 44-4809, 44-4810, 44-4812, and 44-4854, Revised Statutes Supplement, 1989, and also section 44-419, Reissue Revised Statutes of Nebraska, 1943, are repealed.