

LEGISLATIVE BILL 1047

Approved by the Governor April 9, 2004

Introduced by Banking, Commerce and Insurance Committee:

Quandahl, 31, Chairperson; Foley, 29; Jensen, 20; Johnson, 37;
Louden, 49; Mines, 18; Redfield, 12; Tyson, 19

AN ACT relating to insurance; to amend sections 44-161, 44-201, 44-407.11, 44-407.13, 44-407.16, 44-407.23, 44-4809, 44-4862, 44-5143, 44-6124, and 44-6125, Reissue Revised Statutes of Nebraska, sections 44-2703, 44-4201, 44-4203, 44-4221, 44-4228, and 44-4842, Revised Statutes Supplement, 2002, and section 44-407.14, Revised Statutes Supplement, 2003; to change provisions relating to foreign and domestic insurance companies, lines of insurance, annuity contracts, reserves, definitions, life and health insurance, the Comprehensive Health Insurance Pool, supervision, rehabilitation, liquidation, investments, and mutual insurance holding companies; to provide for funding agreements and synthetic guaranteed investment contracts; to eliminate a minimum nonforfeiture amount provision; to harmonize provisions; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to outright repeal section 44-407.15, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 44-161, Reissue Revised Statutes of Nebraska, is amended to read:

44-161. Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. If an insurer transfers its domicile to this state, any investment held by the insurer at the time of the transfer, which shall have been an authorized investment under the laws of the insurer's former state of domicile, shall be deemed an authorized investment under the Insurers Investment Act. The domestic insurer shall be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

Sec. 2. Section 44-201, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) LIFE INSURANCE. Insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits, except that life insurance shall not include variable life insurance specified in subdivision (2) of this section and variable annuities specified in subdivision (3) of this section;

(2) VARIABLE LIFE INSURANCE. Insurance on the lives of individuals, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such insurance;

(3) VARIABLE ANNUITIES. Insurance 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;

(4) SICKNESS AND ACCIDENT INSURANCE. Insurance against loss or expense resulting from the sickness of the insured, from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto;

(5) PROPERTY INSURANCE. Insurance against loss or damage, including consequential loss or damage, to real or personal property of every kind and any interest in such property from any and all hazards or causes, except that property insurance shall not include title insurance specified in subdivision (15) of this section and marine insurance specified in subdivision (18) of this section;

(6) CREDIT PROPERTY INSURANCE. Insurance against loss or damage to personal property used as collateral for securing a loan or to personal property purchased pursuant to a credit transaction, but only insofar as it applies to property sold to or pledged by individual consumers for personal use;

(7) GLASS INSURANCE. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(8) BURGLARY AND THEFT INSURANCE. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing;

(9) BOILER AND MACHINERY INSURANCE. Insurance against any liability and loss or damage to life, person, property, or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(10) LIABILITY INSURANCE. Insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in subdivision (11) of this section;

(11) WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE. Insurance against the legal liability of any employer for the death or disablement of or injury to an employee whether imposed by common law or statute or assumed by contract, except that workers' compensation and employers liability insurance shall not include liability insurance specified in subdivision (10) of this section;

(12) VEHICLE INSURANCE. Insurance against any loss or damage to any land vehicle, other than railroad rolling stock, or any draft animal, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle or animal, together with insurance against accidental injury to or death of any person, irrespective of legal liability of the insured, if such insurance is issued as an incidental part of insurance on the vehicle or draft animal;

(13) FIDELITY INSURANCE. Insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(14) SURETY INSURANCE. Insurance guaranteeing the performance of contracts other than insurance policies or guaranteeing and executing all bonds, undertakings, and contracts of suretyship, except that surety insurance shall not include title insurance specified in subdivision (15) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(15) TITLE INSURANCE. Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (a) 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 insurer the correctness of searches relating to the title to real property and (b) 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 insurer the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property;

(16) CREDIT INSURANCE. Insurance against loss or damage from the failure of persons indebted to or to become indebted to the insured to meet existing or contemplated liabilities, including agreements to purchase uncollectible debts, except that credit insurance shall not include mortgage guaranty insurance specified in subdivision (17) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(17) MORTGAGE GUARANTY INSURANCE. Insurance against financial loss by lenders by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate;

(18) MARINE INSURANCE. Insurance against loss or damage, including consequential 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 against 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 specified in this subdivision, marine insurance shall not include insurance against loss by reason of bodily injury to the person;

(19) FINANCIAL GUARANTY INSURANCE. (1) Insurance issued in the form of a surety bond, insurance policy, or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, against financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(a) Failure of any obligor on any debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to pay when due principal, interest, premium, dividend, or purchase price of or on such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(b) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;

(c) Changes in the rate of exchange of currency;

(d) Inconvertibility of one currency into another for any reason or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority;

(e) Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(f) Other events which the Director of Insurance determines are substantially similar to any of the events described in subdivisions (a) through (e) of this subdivision.

(2) Financial guaranty insurance shall not include:

(a) Insurance of any loss resulting from any event described in subdivisions (19)(1)(a) through (e) of this section if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event;

(ii) A failure of or deficiency in the operation of equipment; or

(iii) An inability to extract or recover a natural resource;

(b) Any individual or schedule public official bond;

(c) Any contract bond, including bid, payment, or maintenance bond, or a performance bond when the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation;

(d) Any court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including waiver, probate, open estate, and life tenant bond;

(e) Any bond running to the federal, state, county, or municipal government or other political subdivision as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

(f) Any loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

(g) Any lease, purchase, and sale or concessionaire surety bond;

(h) Credit unemployment insurance, meaning insurance on a debtor, in connection with a specific loan or other credit transaction, to provide payments to creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

(i) Credit insurance, meaning insurance indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business;

(j) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(k) Funding agreements;

(l) Synthetic guaranteed investment contracts;

(m) Guaranteed interest contracts;

(n) Deposit administration contracts;

(o) Surety insurance as specified in subdivision (14) of this

section and mortgage guaranty insurance as specified in subdivision (17) of this section;

(p) ~~(l)~~ Indemnity contracts or similar guaranties to the extent that they are not otherwise limited or proscribed by Chapter 44 in which a life insurer:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than fifty percent, other than a financial guaranty insurance corporation, except that:

(A) To the extent that any such obligations or indebtedness are backed by specific assets, such assets shall at all times be owned by the insurer or the subsidiary; and

(B) In the case of the guaranty of the obligations or indebtedness of the subsidiary that is not backed by specific assets of the life insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) Guaranties obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary if such assets have been:

(A) Acquired by a special purpose entity, the sole purpose of which is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(B) Sold to an independent third party; or

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer; and

(q) ~~(m)~~ Any other form of insurance covering risks which the director determines to be substantially similar to any of the risks described in subdivisions (a) through ~~(l)~~ (p) of this subdivision; and

(20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but not limited to legal expense insurance and mechanical breakdown insurance, not included within subdivisions (1) to (19) of this section, 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. 3. Section 44-407.11, Reissue Revised Statutes of Nebraska, is amended to read:

44-407.11. In the case of contracts issued on or after the operative date of this act, no contract of annuity, except as stated in subsection (2) of section 44-407.10, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Department of Insurance are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That, upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the company ~~will~~ shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 44-407.16 to 44-407.19 and 44-407.21; -

(2) If a contract provides for a lump-sum settlement at maturity, or at any other time, that, upon surrender of the contract at or prior to the commencement of any annuity payments, the company ~~will~~ shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 44-407.16, 44-407.17, 44-407.19, and 44-407.21. The company shall reserve the right to defer the payment of such cash surrender benefit for a period ~~of~~ not to exceed six months after demand therefor with surrender of the contract. after making written request and receiving written approval of the director. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and -

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Sec. 4. Section 44-407.13, Reissue Revised Statutes of Nebraska, is amended to read:

44-407.13. The minimum values as specified in sections 44-407.16 to 44-407.19 and 44-407.21, of any paid-up annuity, cash surrender, or death

benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts, as defined in ~~sections~~ section 44-407.14. and 44-407.15.

Sec. 5. Section 44-407.14, Revised Statutes Supplement, 2003, is amended to read:

~~44-407.14. With respect to contracts providing for flexible considerations, the~~ (1) (a) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a ~~rate of interest of one and one-half percent per annum of percentages~~ rates of interest as set forth in subsection (2) of this section of the net considerations paid prior to such time, decreased by the sum of subdivisions (1) (a) (i) through (iv) of this section:

(i) Any prior withdrawals from or partial surrenders of the contract, accumulated at rates of interest as set forth in subsection (2) of this section;

(ii) An annual contract charge of fifty dollars, accumulated at rates of interest as set forth in subsection (2) of this section;

(iii) Any premium tax paid by the company for the contract, accumulated at rates of interest as set forth in subsection (2) of this section; and

(iv) The amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

(b) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross consideration credited to the contract during that contract year.

(2) The interest rate used in determining the minimum nonforfeiture amount shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under subdivision (2) (d) of this section;

(b) Reduced by one hundred twenty-five basis points;

(c) The resulting interest rate shall not be less than one percent;

and

(d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(3) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subdivision (2) (b) of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The director may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the director, the director may disallow or limit the additional reduction.

(4) The director may adopt rules to implement the provisions of subsection (3) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the director determines adjustments are justified. ~~(1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of one and one-half percent per annum; and (2) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.~~

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be ~~sixty-five percent~~ of the net consideration for the first contract year and ~~eighty-seven and one-half percent~~ of the net

~~considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.~~

Sec. 6. Section 44-407.16, Reissue Revised Statutes of Nebraska, is amended to read:

44-407.16. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest ~~rate~~ rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Sec. 7. Section 44-407.23, Reissue Revised Statutes of Nebraska, is amended to read:

44-407.23. (1) After August 24, 1979, any company may file with the Department of Insurance a written notice of its election to comply with the provisions of sections 44-403, 44-404, and 44-407.08 to 44-407.23 after a specified date before the second anniversary of August 24, 1979. After the filing of such notice, such specified date shall be the operative date of this act for such company. Annuity contracts thereafter issued by such company shall comply with such sections. If a company makes no such election, the operative date of this act for such company shall be the second anniversary of August 24, 1979.

(2) After the effective date of this act, a company may elect to apply sections 44-407.08 to 44-407.23 to annuity contracts on a contract-form-by-contract-form basis before the second anniversary of the effective date of this act. In all other instances, sections 44-407.08 to 44-407.23 shall become operative with respect to annuity contracts issued by the company after the second anniversary of the effective date of this act.

(3) The director may adopt and promulgate rules and regulations to carry out sections 44-407.10 to 44-407.23.

Sec. 8. Section 44-2703, Revised Statutes Supplement, 2002, is amended to read:

44-2703. (1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides;

or

(ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1144;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides

for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form, filing, or approval requirements;

- (C) Misrepresentations of or regarding policy benefits;
 - (D) Extra-contractual claims; or
 - (E) A claim for penalties or consequential or incidental damages;
 - (ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;
 - (x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;
 - (xi) An unallocated annuity contract, a funding agreement, a guaranteed interest contract, a guaranteed investment contract, a synthetic guaranteed investment contract, or a deposit administration contract;
 - (xii) Any such policy or contract issued by:
 - (A) A nonprofit hospital or medical service organization;
 - (B) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;
 - (C) A fraternal benefit society;
 - (D) A mandatory state pooling plan;
 - (E) An unincorporated mutual association;
 - (F) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or
 - (G) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment; or
 - (xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44.
- (3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:
- (a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or
 - (b) (i) With respect to one life, regardless of the number of policies or contracts:
 - (A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
 - (B) Five hundred thousand dollars in health insurance benefits; or
 - (C) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
 - (ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, one hundred thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;
 - (iii) The association shall not be obligated to cover more than:
 - (A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i)(A) and (C) of this section, except that with respect to benefits for health insurance under subdivision (3)(b)(i)(B) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or
 - (B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;
 - (iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's

obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Sec. 9. Section 44-4201, Revised Statutes Supplement, 2002, is amended to read:

44-4201. Sections 44-4201 to 44-4235 and section 11 of this act shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Sec. 10. Section 44-4203, Revised Statutes Supplement, 2002, is amended to read:

44-4203. For the purposes of the Comprehensive Health Insurance Pool Act, the definitions found in sections 44-4204 to 44-4215.01 and section 11 of this act shall be used.

Sec. 11. Qualified trade adjustment assistance eligible individual shall mean an individual who is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code.

Sec. 12. Section 44-4221, Revised Statutes Supplement, 2002, is amended to read:

44-4221. (1) To be eligible to purchase health insurance coverage from the pool, an individual shall:

(a) Be a resident of the state for a period of at least six months and shall:

(i) Have received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer;

(ii) Currently have, or have been offered within six months prior to application to the pool, health insurance coverage by an insurer which includes a restrictive rider which limits insurance coverage for a preexisting medical condition; or

(iii) Have been refused health insurance coverage comparable to the pool, or have been offered such coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool; ~~or~~

(b) Be a resident of the state for any length of time and be an individual:

(i) For whom, as of the date the individual seeks pool coverage under this section, the aggregate of the periods of creditable coverage is eighteen or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(ii) Who is not eligible for coverage under a group health plan, medicare, or medical assistance pursuant to section 43-522 or sections 68-1018 to 68-1025, or any successor program, and who does not have any other health insurance coverage;

(iii) With respect to whom the most recent prior creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

(iv) (A) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage, or (B) who had been offered the option of continuation coverage under COBRA or under a similar program at a premium rate higher than that available from the pool; or

(c) Be a resident of the state for any length of time and be a qualified trade adjustment assistance eligible individual.

(2) The board may adopt and promulgate a list of medical or health conditions for which an individual would be eligible for pool coverage without applying for health insurance coverage pursuant to subdivision (1)(a) of this section. Individuals who can demonstrate the existence or history of any medical or health conditions on the list adopted and promulgated by the board shall be eligible to apply directly to the pool for health insurance coverage.

Sec. 13. Section 44-4228, Revised Statutes Supplement, 2002, is amended to read:

44-4228. (1) Pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of pool coverage as to any condition (a) which had manifested itself during the six-month period immediately preceding the effective date of pool coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (b) for which medical advice, care, or treatment was

recommended or received during the six-month period immediately preceding the effective date of pool coverage.

(2) Any individual whose health coverage is involuntarily terminated on or after January 1, 1992, and who is not eligible for a conversion policy or a continuation-of-coverage policy or contract available under state or federal law may apply for pool coverage but shall submit proof of eligibility pursuant to subdivision (1)(a) of section 44-4221. If such proof is supplied and if pool coverage is applied for under the Comprehensive Health Insurance Pool Act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period, any waiting period or preexisting condition exclusions provided for under the pool coverage shall be waived to the extent similar exclusions, if any, under the previous health coverage have been satisfied and the effective date of the pool coverage shall be the day following termination of the previous health coverage. The board may assess an additional premium for pool coverage provided pursuant to this subsection notwithstanding the premium limitations stated in section 44-4227. For purposes of this section, an individual whose health coverage is involuntarily terminated means an individual whose health insurance or health plan is terminated by reason of the withdrawal by the insurer from this state, bankruptcy or insolvency of the employer or employer trust fund, or cessation by the employer of providing any group health plan for all of its employees.

(3) Any individual whose health coverage under a continuation-of-coverage policy or contract available under state or federal law terminates or is involuntarily terminated on or after July 1, 1993, for any reasons other than nonpayment of premium may apply for pool coverage but shall submit proof of eligibility applied for within ninety days after the termination or involuntary termination. If premiums are paid to the pool for the entire coverage period, the effective date of the pool coverage shall be the day following termination of the previous coverage under the continuation-of-coverage policy or contract. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under any prior health coverage have been satisfied.

(4) Subsection (1) of this section shall not apply to an individual who has received medical assistance pursuant to section 43-522 or sections 68-1018 to 68-1025 or an organ transplant recipient terminated from coverage under medicare during the six-month period immediately preceding the effective date of coverage.

(5) All waiting periods and preexisting conditions shall be waived for an individual eligible for pool coverage under subdivision (1)(b) of section 44-4221.

(6) The waiting period and preexisting condition exclusions are waived for a qualified trade adjustment assistance eligible individual under subdivision (1)(c) of section 44-4221 if the individual maintained creditable coverage for an aggregate period of three months as of the date on which the individual seeks to enroll in pool coverage, not counting any period prior to a sixty-three-day break in coverage.

Sec. 14. Section 44-4809, Reissue Revised Statutes of Nebraska, is amended to read:

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)(a) Whenever the director has reasonable cause to believe and determines, upon examination of any domestic insurer or at any other time, that (i) the insurer's condition renders the continuance of its business hazardous to the public or to its insureds, (ii) the insurer has or appears to have exceeded its powers granted under its certificate of authority and applicable law, (iii) the insurer has failed to comply with the applicable provisions of the insurance laws of this state, (iv) the insurer's business is being conducted fraudulently, or (v) the insurer gives its consent, the director shall by order notify the insurer of his or her determination and furnish to the insurer a written list of the requirements to abate the determination.

(b) For purposes of subdivision (2)(a)(ii) of this section, an insurer has exceeded its powers if it:

(i) Has refused to permit examination of its books, papers, accounts, records, or affairs by the director or his or her deputies,

employees, or examiners;

(ii) Has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer;

(iii) Has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(iv) Has neglected or refused to observe an order of the director to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus;

(v) Has continued doing business after its license or certificate of authority has been revoked or suspended by the director;

(vi) By contract or otherwise, has unlawfully, in violation of an order of the director, or without first having obtained written approval of the director if approval is required by law:

(A) Totally reinsured its entire outstanding business; or

(B) Merged or consolidated substantially its entire property or business with another insurer;

(vii) Has engaged in any transaction in which it is not authorized to engage under the laws of this state; or

(viii) Has refused to comply with a lawful order of the director.

(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 any funds 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;

(i) Write or renew any insurance business;

(j) Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract except for nonpayment of premiums due;

(k) Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate, or contract;

(l) Make any material change in management; or

(m) Increase salaries and benefits of officers or directors or make any preferential payment of bonuses, dividends, or other payments deemed preferential.

(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) or (2) of this section and any order issued pursuant to either 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. Such hearings and any notices, orders, correspondence, records, or reports relating thereto shall be considered public unless the director deems it to be in the best interests of the insurer, its insureds or creditors, or the public that such hearings shall be held privately and such notices, orders, correspondence, records, or reports shall be considered confidential.

(6) (a) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order, 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.

(c) If the director issues an order under subsection (2) of this section and subsequently determines that a rehabilitation or liquidation is appropriate, the director may at any time institute such proceedings under section 44-4812 or 44-4817.

(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. 15. Section 44-4842, Revised Statutes Supplement, 2002, is amended to read:

44-4842. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including, but not limited to, the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all properly authorized services rendered in the rehabilitation and liquidation;

(c) Any necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Authorized reasonable attorney's fees and fees for other professional services rendered in the rehabilitation and liquidation;

(f) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses; and

(g) The expenses of examinations conducted pursuant to the Insurers Examination Act;

(2) Class 2. All claims under policies, including such claims of the federal or any state or local government, for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, funding agreements, guaranteed interest contracts, guaranteed investment contracts, synthetic guaranteed investment contracts, and deposit administration contracts, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance or as gratuities. No payment by an employer to his or her employee shall be treated as a gratuity;

(3) Class 3. Claims of the federal government other than those claims included in subdivision (2) of this section;

(4) Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary

compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors of the insurer shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees;

(5) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming insurers in their capacity as such;

(6) Class 6. Claims of any state or local government except those under subdivision (2) of this section. Claims, including those of a governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (9) of this section;

(7) Class 7. Claims filed late or any other claims other than claims under subdivisions (8) and (9) of this section;

(8) Class 8. Surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law; and

(9) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

Sec. 16. (1) Every claim allowed under a separate account policy, contract, or agreement providing, in effect, that the assets allocated to the separate account are not chargeable with liabilities arising out of any other business of the life insurer, shall be satisfied out of the assets properly allocated to and maintained in the separate account, equal to the reserves maintained in the separate account for the policies, contracts, or agreements. No liabilities of the insurer arising out of any other business of the insurer shall be satisfied from assets properly allocated to and maintained in a separate account except from any assets allocated to the separate account that exceed the reserves under the separate account policies, contracts, or agreements. Any valid and allowed claim for contractual benefits that cannot be satisfied out of the assets properly allocated to and maintained in a separate account shall be included as a claim against the general account as set forth in subdivision (2) of section 44-4842.

(2) Notwithstanding any other provision of law, to the extent that any assets of a life insurer, other than those assets properly allocated to, and maintained in, a separate account, have been used to fund or pay any expenses, taxes, or policyholder benefits that are attributable to a separate account policy, contract, or agreement that should have been paid by a separate account prior to the commencement of delinquency proceedings, then upon the commencement of delinquency proceedings, the separate accounts that benefited from this payment or funding shall first be used to repay or reimburse the insurer's general assets or account for any unreimbursed net sums due at the commencement of delinquency proceedings prior to the application of the separate account assets to the satisfaction of liabilities of the corresponding separate account policies, contracts, and agreements.

(3) For purposes of this section, separate account policies, contracts, or agreements means any policies, contracts, or agreements that provide for separate accounts as contemplated by sections 44-402.01 to 44-402.05 or section 21 of this act.

Sec. 17. Section 44-4862, Reissue Revised Statutes of Nebraska, is amended to read:

44-4862. Sections 44-4801 to 44-4862 and section 16 of this act shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 18. Section 44-5143, Reissue Revised Statutes of Nebraska, is amended to read:

44-5143. (1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed seventy-five percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed seventy-five percent of the market value of the real estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than seventy-five percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in improved real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by rentals to accrue therefrom to the owner of the real estate;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed seventy-five percent of the appraised value of such leasehold with improvements at the time of making the loan; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds seventy-five percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a) (i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) If there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indenture.

(6) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 19. Section 44-6124, Reissue Revised Statutes of Nebraska, is amended to read:

44-6124. For purposes of the Mutual Insurance Holding Company Act:

(1) Director means the Director of Insurance;

(2) Intermediate stock holding company means a holding company of which at least a majority of the voting securities are owned by a mutual insurance holding company and which, directly or indirectly, owns all of the voting securities of a reorganized stock insurer;

(3) Mutual insurance holding company means a holding company based on a mutual plan which at all times owns, directly or indirectly, a majority of the voting securities of a ~~single one or more~~ intermediate stock holding company ~~companies~~ or, if no such intermediate stock holding company exists, which owns a majority of the voting securities of a reorganized stock insurer;

(4) Reorganized stock insurer means a stock insurer subsidiary which results from a reorganization of a domestic mutual insurer pursuant to subsection (1) or (2) of section 44-6125 and in compliance with the act; and

(5) Voting securities means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management, other than securities having voting power only because of the occurrence of a contingency.

Sec. 20. Section 44-6125, Reissue Revised Statutes of Nebraska, is amended to read:

44-6125. (1) A domestic mutual insurer, upon approval of the director, may reorganize (a) by forming a mutual insurance holding company, (b) by merging its policyholders' membership interests into the mutual insurance holding company, and (c) by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(2) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subsection (1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(3) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subsection (1) or (2) of this section shall be issued to the mutual insurance holding company or to a single one or more intermediate stock holding company companies.

(4) Policyholders of a domestic mutual insurer which has reorganized as described in subsection (1) or (2) of this section shall be members of the mutual insurance holding company and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization. The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.

(5) If an insurer which is organized under the laws of another state transfers its domicile to this state in accordance with section 44-161 and is a direct or indirect subsidiary of a mutual insurance holding company organized under the laws of such other state, then, in connection with the transfer of the domicile of such insurer, upon approval of the director of a plan of merger and transfer, the foreign mutual insurance holding company may form a mutual insurance holding company under this section, and the foreign mutual insurance holding company may merge into such domestic mutual insurance holding company simultaneously with the transfer of domicile of the insurer to this state. Until the merger takes effect, the foreign mutual insurance holding company shall be the sole member of the domestic mutual insurance holding company. When the merger takes effect, the separate existence of the foreign mutual insurance holding company shall cease, the domestic mutual insurance holding company shall survive and have all the assets and liabilities formerly held by the foreign mutual insurance holding company, all of the members of the foreign mutual insurance holding company shall become members of the domestic mutual insurance holding company, policyholders of the insurer shall be members of the domestic mutual insurance holding company, and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the domestic mutual insurance holding company. After the transfer and merger take effect, for purposes of the Mutual Insurance Holding Company Act, the insurer shall be deemed to be a reorganized stock insurer. If the foreign mutual insurance holding company owns a majority of the voting stock of a stock holding company organized under the laws of another state that in turn owns all of the voting stock of the insurer, then the plan of merger and transfer may provide that the stock holding company shall continue as a corporation organized under the laws of the other state.

(6) (a) A mutual insurance holding company or ~~an~~ any intermediate stock holding company formed under the Mutual Insurance Holding Company Act shall not be authorized to transact the business of insurance.

(b) A mutual insurance holding company formed under the act shall not issue stock.

(c) The director shall have jurisdiction over a mutual insurance holding company and ~~an~~ any intermediate stock holding company to ensure that policyholder interests are protected.

(d) A mutual insurance holding company and ~~an~~ any intermediate stock holding company shall be treated as domestic insurers subject to the Insurers Demutualization Act, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, Chapter 44, article 2, and section 44-301, except that a foreign intermediate stock holding company shall not be subject to Chapter 44, article 2, and section 44-301.

(e) ~~The~~ Except with the approval of the director, the aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized

stock insurer.

(f) At least fifty percent of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers.

(g) If any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings. All of the assets of the mutual insurance holding company and ~~intermediate stock holding company~~ are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy policy claims against the reorganized stock insurer.

(h) No distribution to members of a mutual insurance holding company may occur without prior written approval of the director and only upon the director's satisfaction that such distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(i) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the director's prior written approval.

(j) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the director.

Sec. 21. (1) Insurers authorized to deliver or issue for delivery life insurance policies in this state may deliver or issue for delivery one or more funding agreements, but the delivery or issuance for delivery of funding agreements shall not be deemed the business of insurance, life insurance or an annuity or other line of business as set forth in section 44-201, a security as defined in subdivision (15) of section 8-1101, or receipt of gross premiums as set forth in section 77-908. The delivery or issuance for delivery of a funding agreement by an admitted life insurer in this state shall constitute a lawful activity of that insurer that is reasonably related to and incidental to its insurance activities as provided in this section. However, this section shall not authorize any insurer to transact, under the guise of funding agreements, any line of insurance not authorized by its certificate of authority.

(2) No amounts shall be guaranteed or credited under any funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(3) Amounts paid to the insurer, and proceeds applied under optional modes of settlement, under funding agreements may be allocated by the insurer to one or more separate accounts.

(4) The Director of Insurance may adopt and promulgate rules and regulations to implement this section, including rules and regulations setting forth the terms and conditions under which an insurer may issue funding agreements.

(5) Notwithstanding any other provision of law, the director shall have sole authority to regulate the issuance and sale of funding agreements, including the persons selling funding agreements on behalf of insurers.

(6) Nothing in this section is intended to affect the order in which allowed claims shall be given preference under section 44-4842. Holders of funding agreements shall retain the priority in allowance of claims described in subdivision (2) of section 44-4842.

(7) For purposes of this section, funding agreement means an agreement that authorizes an admitted life insurer to accept funds and that provides for an accumulation of those funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. Funding agreement does not include any agreement in connection with the funding of one or more payments that are excludable from the gross income of the recipient under section 104(a)(2) of the Internal Revenue Code.

Sec. 22. (1) Insurers authorized to deliver or issue for delivery life insurance policies in this state may deliver or issue for delivery synthetic guaranteed investment contracts if the following requirements are met:

(a) The insurer is authorized to deliver, or issue for delivery, life insurance policies in this state; and

(b) The insurer has at least one billion dollars in admitted assets or one hundred million dollars in capital and surplus, as reflected by the most recent financial statements on file with the Director of Insurance.

(2) Synthetic guaranteed investment contracts, that are not otherwise subject to filing under applicable law and regulation, shall be filed, before being marketed or issued in this state, by the insurer with the

director. If the director finds that the synthetic guaranteed investment contracts contemplate practices that are unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 44, the director may disapprove of the forms of synthetic guaranteed investment contracts specifying in what regard the synthetic guaranteed investment contracts are unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 44.

(3) The director may adopt and promulgate rules and regulations to implement this section, including rules and regulations setting forth the terms and conditions under which an insurer may issue synthetic guaranteed investment contracts.

(4) For purposes of this section, synthetic guaranteed investment contract means a policy, contract, or agreement that establishes the insurer's obligations under the policy, contract, or agreement by reference to a portfolio of assets that is not owned or possessed by the insurer.

Sec. 23. The Revisor of Statutes shall assign sections 21 and 22 of this act to Chapter 44, article 7.

Sec. 24. Original sections 44-161, 44-201, 44-407.11, 44-407.13, 44-407.16, 44-407.23, 44-4809, 44-4862, 44-5143, 44-6124, and 44-6125, Reissue Revised Statutes of Nebraska, sections 44-2703, 44-4201, 44-4203, 44-4221, 44-4228, and 44-4842, Revised Statutes Supplement, 2002, and section 44-407.14, Revised Statutes Supplement, 2003, are repealed.

Sec. 25. The following section is outright repealed: Section 44-407.15, Reissue Revised Statutes of Nebraska.