

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 828

Introduced by Ashford, 20; Lathrop, 12; Pedersen, 39.

Read first time January 10, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to courts; to amend sections 8-1,134, 8-1725,
2 8-1736, 9-817, 9-821, 9-832, 12-1119, 21-315, 21-317,
3 21-323.02, 21-325.02, 21-1909, 21-19,140, 21-19,142,
4 21-19,160, 21-2009, 21-20,161, 21-20,163, 21-20,181,
5 21-2215, 29-3528, 37-708.01, 44-1528, 44-2140, 44-2141,
6 44-2142, 44-2151, 44-2707, 44-32,166, 44-4804, 44-4809,
7 44-4810, 44-4812, 44-4813, 44-4816, 44-4817, 44-4828,
8 44-4831, 44-4833, 44-4847, 44-4849, 44-4850, 44-4851,
9 44-4852, 44-4853, 44-6023, 44-6111, 44-6115, 44-6115.01,
10 44-6115.02, 44-6121, 44-6131, 44-6141, 45-191.08, 45-921,
11 45-924, 48-638, 48-813, 54-1914, 59-1611, 59-1725,
12 67-441, 69-306, 69-2116, 69-2710, 70-604.05, 70-1019,
13 75-140, 75-158, 75-369.04, 75-369.06, 75-1012, 76-1315,
14 76-2118, 76-2119, 77-915, 77-2798, 79-1166, 81-8,214,

1 81-8,305, 83-1223, 84-213, 84-911, and 87-219.01,
2 Reissue Revised Statutes of Nebraska, sections 8-1016,
3 8-1017, 9-701, 13-2042, 23-2522, 25-21,206, 25-21,264,
4 45-717, 45-717.02, 66-1529.02, 75-156, 77-27,127,
5 77-5726, 81-8,211, 83-1224, and 87-142, Revised Statutes
6 Cumulative Supplement, 2006, and sections 28-738,
7 44-8216, 71-2408, 76-2223, 77-5011, and 85-1418, Revised
8 Statutes Supplement, 2007; to change limitations of
9 jurisdiction to the Lancaster County District Court
10 as prescribed; to harmonize provisions; to provide an
11 operative date; to repeal the original sections; and to
12 outright repeal section 8-1,135, Reissue Revised Statutes
13 of Nebraska.

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

1 Section 1. Section 8-1,134, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-1,134 (1) Whenever the Director of Banking and Finance
4 has reason to believe that a violation of any provision of Chapter
5 8 or of the Credit Union Act or any rule, regulation, or order
6 of the Department of Banking and Finance has occurred, he or
7 she may cause a written complaint to be served upon the alleged
8 violator. The complaint shall specify the statutory provision or
9 rule, regulation, or order alleged to have been violated and the
10 facts alleged to constitute a violation thereof and shall order
11 that necessary corrective action be taken within a reasonable time
12 to be prescribed in such order. Any such order shall become final
13 as to any person named in the order unless such person requests,
14 in writing, a hearing before the director no later than ten days
15 after the date such order is served. In lieu of such order, the
16 director may require that the alleged violator appear before the
17 director at a time and place specified in the notice and answer the
18 charge complained of. The notice shall be delivered to the alleged
19 violator or violators in accordance with subsection (4) of this
20 section not less than ten days before the time set for the hearing.

21 (2) The director shall provide an opportunity for a fair
22 hearing to the alleged violator at the time and place specified
23 in the notice or any modification of the notice. On the basis
24 of the evidence produced at the hearing, the director shall make
25 findings of fact and conclusions of law and enter such order as

1 in his or her opinion will best further the purposes of Chapter
2 8 or the Credit Union Act and the rules, regulations, and orders
3 of the department. Written notice of such order shall be given
4 to the alleged violator and to any other person who appeared at
5 the hearing and made written request for notice of the order. If
6 the hearing is held before any person other than the director,
7 such person shall transmit a record of the hearing together with
8 findings of fact and conclusions of law to the director. The
9 director, prior to entering his or her order on the basis of such
10 record, shall provide opportunity to the parties to submit for his
11 or her consideration exceptions to the findings or conclusions and
12 supporting reasons for such exceptions. The order of the director
13 shall become final and binding on all parties unless appealed
14 to the district court of Lancaster County as provided in section
15 ~~8-1,135.~~ in accordance with the Administrative Procedure Act. As
16 part of such order, the director may impose a fine, in addition
17 to the costs of the investigation, upon a person found to have
18 violated any provision of Chapter 8, the Credit Union Act, or the
19 rules, regulations, or orders of the department. The fine shall not
20 exceed ten thousand dollars per violation for the first offense
21 and twenty-five thousand dollars per violation for a second or
22 subsequent offense involving a violation of the same provision of
23 Chapter 8, the Credit Union Act, the rules and regulations of the
24 department, or the same order of the department. ~~The fines and~~
25 ~~costs shall be in addition to all other penalties imposed by the~~

1 laws of this state, shall be collected by the director, and shall
2 be remitted to the State Treasurer. Costs shall be credited to
3 the Financial Institution Assessment Cash Fund, and fines shall
4 be credited to the permanent school fund. The fines and costs
5 shall be in addition to all other penalties imposed by the laws
6 of this state. The director shall collect the fines and costs and
7 remit them to the State Treasurer. The State Treasurer shall credit
8 the costs to the Financial Institution Assessment Cash Fund and
9 distribute the fines in accordance with Article VII, section 5, of
10 the Constitution of Nebraska. If a person fails to pay the fine or
11 costs of the investigation, a lien in the amount of the fine and
12 costs shall be imposed upon all of the assets and property of such
13 person in this state and may be recovered by suit by the director.
14 The lien shall attach to the real property of such person when
15 notice of the lien is filed and indexed against the real property
16 in the office of the register of deeds in the county where the real
17 property is located. The lien shall attach to any other property of
18 such person when notice of the lien is filed against the property
19 in the manner prescribed by law.

20 (3) Whenever the director finds that an emergency exists
21 requiring immediate action to protect the safety and soundness
22 of the institutions under the supervision and control of the
23 department, the director may, without notice or hearing, issue an
24 order reciting the existence of an emergency and requiring that
25 such action be taken as the director deems necessary to meet

1 the emergency. Notwithstanding the provisions of subsection (2) of
2 this section, the order shall be effective immediately. Any person
3 to whom such order is directed shall comply immediately, but on
4 application to the director shall be afforded a hearing as soon
5 as possible and not later than ten days after such application
6 by the affected person. On the basis of the hearing, the director
7 shall continue the order in effect, revoke it, or modify it.
8 This subsection shall not apply to a determination of necessary
9 acquisition made by the department pursuant to sections 8-1506 to
10 8-1510.

11 (4) Except as otherwise expressly provided, any notice,
12 order, or other instrument issued by or under authority of the
13 director shall be served on any person affected thereby either
14 personally or by certified mail, return receipt requested. Proof of
15 service shall be filed in the office of the director.

16 Every certificate or affidavit of service made and filed
17 as provided in this subsection shall be prima facie evidence of the
18 facts stated in the certificate or affidavit, and a certified copy
19 shall have the same force and effect as the original.

20 (5) Any hearing provided for in this section may be
21 conducted by the director, or by any member of the department
22 acting in his or her behalf, or the director may designate hearing
23 officers who shall have the power and authority to conduct such
24 hearings in the name of the director at any time and place. A
25 verbatim record of the proceedings of such hearings shall be taken

1 and filed with the director, together with findings of fact and
2 conclusions of law made by the director or hearing officer. The
3 director may subpoena witnesses, and any witness who is subpoenaed
4 shall receive the same fees as in civil actions in the district
5 court and mileage as provided in section 81-1176. In case of
6 contumacy or refusal to obey a notice of hearing or subpoena
7 issued under this section, the district court ~~of Lancaster County~~
8 shall have jurisdiction, upon application of the director, to issue
9 an order requiring such person to appear and testify or produce
10 evidence as the case may require. Failure to obey such order of the
11 court may be punished by such court as contempt.

12 If requested to do so by any party concerned with such
13 hearing, the full stenographic notes, or tapes of an electronic
14 transcribing device, of the testimony presented at such hearing
15 shall be taken and filed. The stenographer shall, upon the payment
16 of the stenographer's fee allowed by the court, furnish a certified
17 transcript of all or any part of the stenographer's notes to any
18 party to the action requiring and requesting such notes.

19 (6) The director may close to the public the hearing, or
20 any portion of the hearing, provided for in this section when he or
21 she finds that the closure is (a) necessary to protect any person,
22 or any financial institution or entity under the department's
23 jurisdiction, against unwarranted injury or (b) in the public
24 interest. The director shall close no more of the public hearing
25 than is necessary to attain the objectives of this subsection.

1 Sec. 2. Section 8-1016, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 8-1016 (1) The Department of Banking and Finance may
4 order any person to cease and desist whenever the department
5 determines that the person has violated any provision of the
6 Nebraska Sale of Checks and Funds Transmission Act. Upon entry of
7 a cease and desist order, the director shall promptly notify the
8 affected person that such order has been entered, of the reasons
9 for such order, and that upon receipt, within fifteen business
10 days after the date of the order, of written request from the
11 affected person a hearing will be scheduled within thirty business
12 days after the date of receipt of the written request, unless the
13 parties consent to a later date or the hearing officer sets a later
14 date for good cause. If a hearing is not requested and none is
15 ordered by the director, the order shall remain in effect until it
16 is modified or vacated.

17 (2) The director may vacate or modify a cease and desist
18 order if he or she finds that the conditions which caused its entry
19 have changed or that it is otherwise in the public interest to do
20 so.

21 (3) A person aggrieved by a cease and desist order of
22 the director may obtain judicial review of the order in the manner
23 prescribed in the Administrative Procedure Act. The director may
24 obtain an order from the district court of ~~Lancaster County~~ for
25 enforcement of the cease and desist order.

1 Sec. 3. Section 8-1017, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 8-1017 (1) For the purpose of any investigation or
4 proceeding under the Nebraska Sale of Checks and Funds Transmission
5 Act, the director or any officer designated by him or her may
6 administer oaths and affirmations, subpoena witnesses and compel
7 their attendance, take evidence, and require the production of
8 any books, papers, correspondence, memoranda, agreements, or other
9 documents or records which the director deems relevant or material
10 to the inquiry. If any person refuses to comply with a subpoena
11 issued under this section or to testify with respect to any matter
12 relevant to the proceeding, the district court ~~of Lancaster County~~
13 may, on application of the director, issue an order requiring the
14 person to comply with the subpoena and to testify. Failure to obey
15 an order of the court to comply with the subpoena may be punished
16 by the court as civil contempt.

17 (2) The director may request the Attorney General to
18 enforce the act. A civil enforcement action by the Attorney General
19 may be filed in the district court ~~of Lancaster County~~. A civil
20 enforcement action by the Attorney General may seek temporary and
21 permanent injunctive relief, restitution for a customer aggrieved
22 by a violation of the act, and costs for the investigation and
23 prosecution of the enforcement action.

24 (3) Failure to comply with the act shall not affect the
25 validity or enforceability of any transaction. A person entering

1 into a transaction pursuant to the act is not required to ascertain
2 the extent of compliance with the act.

3 (4) Nothing in the act shall limit any statutory or
4 common-law right of any person to bring any action in any court
5 for any act involved in the sale of checks or funds transmission
6 business or the right of the state to punish any person for any
7 violation of law.

8 Sec. 4. Section 8-1725, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 8-1725 (1) The director may make investigations, within
11 or without this state, as he or she finds necessary or appropriate
12 to:

13 (a) Determine whether any person has violated or is
14 about to violate any provision of the Commodity Code or any rule,
15 regulation, or order of the director; or

16 (b) Aid in enforcement of the Commodity Code.

17 (2) The director may publish information concerning any
18 violation of the code or any rule, regulation, or order of the
19 director.

20 (3) For purposes of any investigation or proceeding
21 under the Commodity Code, the director or any officer or employee
22 designated by rule, regulation, or order may administer oaths
23 and affirmations, subpoena witnesses, compel the attendance of
24 witnesses, take evidence, and require the production of any books,
25 papers, correspondence, memoranda, agreements, or other documents

1 or records which the director finds to be relevant or material to
2 the inquiry.

3 (4) (a) In case of contumacy by or refusal to obey a
4 subpoena issued to any person, any court of competent jurisdiction,
5 upon application by the director, may issue to that person an order
6 requiring him or her to appear before the director or the officer
7 designated by the director to produce documentary evidence if so
8 ordered or to give evidence touching the matter under investigation
9 or in question. Any failure to obey the order of the court may be
10 punished by the court as a contempt of court.

11 (b) The request for order of compliance may be addressed
12 to either (i) ~~the district court of Lancaster County or the~~
13 ~~district court in the county where service may be obtained on the~~
14 ~~person refusing to testify or produce, if the person is within this~~
15 ~~state, or (ii) the appropriate district court of this state having~~
16 ~~jurisdiction over the person refusing to testify or produce, if the~~
17 ~~person is outside this state.~~

18 Sec. 5. Section 8-1736, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 8-1736 (1) Any person aggrieved by a final order of the
21 director may obtain a review of the order in the district court ~~of~~
22 ~~Lancaster County~~ by filing, within sixty days after the entry of
23 the order, a written petition praying that the order be modified or
24 set aside in whole or in part. A copy of the petition for review
25 shall be served upon the director.

1 (2) Upon the filing of a petition for review, except when
2 the taking of additional evidence is ordered by the court pursuant
3 to subsection (5) or (6) of this section, the court shall have
4 exclusive jurisdiction of the matter, and the director may not
5 modify or set aside the order in whole or in part.

6 (3) The filing of a petition for review under subsection
7 (1) of this section shall not, unless specifically ordered by the
8 court, operate as a stay of the director's order, and the director
9 may enforce or ask the court to enforce the order pending the
10 outcome of the review proceedings.

11 (4) Upon receipt of the petition for review, the director
12 shall certify and file in the court a copy of the order and the
13 transcript or record of the evidence upon which it was based. If
14 the order became final by operation of law under subsection (4) of
15 section 8-1735, the director shall certify and file in court the
16 summary order, evidence of its service upon the parties to it, and
17 an affidavit certifying that no hearing has been held and the order
18 became final pursuant to such section.

19 (5) If either the aggrieved party or the director applies
20 to the court for leave to adduce additional evidence and shows to
21 the satisfaction of the court that there were reasonable grounds
22 for failure to adduce the evidence in the hearing before the
23 director or other good cause, the court may order the additional
24 evidence to be taken by the director under such conditions as the
25 court considers proper.

1 (6) If new evidence is ordered taken by the court,
2 the director may modify the findings and order by reason of the
3 additional evidence and shall file in the court the additional
4 evidence together with any modified or new findings or order.

5 (7) The court shall review de novo the petition based
6 upon the original record before the director as amended under
7 subsections (5) and (6) of this section. The findings of the
8 director as to the facts, if supported by competent, material, and
9 substantive evidence, shall be conclusive. Based upon such review,
10 the court may affirm, modify, enforce, or set aside the order, in
11 whole or in part.

12 (8) The judgment of the court may be appealed to the
13 Court of Appeals.

14 Sec. 6. Section 9-701, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 9-701 (1) For purposes of this section:

17 (a) Gift enterprise means a contest, game of chance, or
18 game promotion which is conducted within the state or throughout
19 the state and other states in connection with the sale of consumer
20 or trade products or services solely as business promotions and in
21 which the elements of chance and prize are present. Gift enterprise
22 does not include any scheme using the game of bingo or keno;
23 any non-telecommunication-related, player-activated electronic or
24 electromechanical facsimile of any game of chance; or any slot
25 machine of any kind. A gift enterprise shall not utilize pickle

1 cards as defined in section 9-315. Promotional game tickets may be
2 utilized subject to the following:

3 (i) The tickets utilized shall be manufactured or
4 imprinted with the name of the operator on each ticket;

5 (ii) The tickets utilized shall not be manufactured with
6 a cost per play printed on them; and

7 (iii) The tickets utilized shall not be substantially
8 similar to any type of pickle card approved by the Department of
9 Revenue pursuant to section 9-332.01; and

10 (b) Operator means any person, firm, corporation,
11 association, governmental entity, or agent or employee thereof who
12 promotes, operates, or conducts a gift enterprise. Operator does
13 not include any nonprofit organization or any agent or employee
14 thereof, except that operator includes any credit union chartered
15 under state or federal law or any agent or employee thereof who
16 promotes, operates, or conducts a gift enterprise.

17 (2) Any operator may conduct a gift enterprise within
18 this state in accordance with this section.

19 (3) An operator shall not:

20 (a) Design, engage in, promote, or conduct a gift
21 enterprise in connection with the promotion or sale of consumer
22 products or services in which the winner may be unfairly
23 predetermined or the game may be manipulated or rigged;

24 (b) Arbitrarily remove, disqualify, disallow, or reject
25 any entry;

1 (c) Fail to award prizes offered;

2 (d) Print, publish, or circulate literature or
3 advertising material used in connection with such gift enterprise
4 which is false, deceptive, or misleading; or

5 (e) Require an entry fee, a payment or promise of payment
6 of any valuable consideration, or any other consideration as a
7 condition of entering a gift enterprise or winning a prize from the
8 gift enterprise, except that a contest, game of chance, or business
9 promotion may require, as a condition of participation, evidence
10 of the purchase of a product or service as long as the purchase
11 price charged for such product or service is not greater than it
12 would have been without the contest, game of chance, or business
13 promotion. For purposes of this section, consideration shall not
14 include (i) filling out an entry blank, (ii) entering by mail with
15 the purchase of postage at a cost no greater than the cost of
16 postage for a first-class letter weighing one ounce or less, or
17 (iii) entering by a telephone call to the operator of or for the
18 gift enterprise at a cost no greater than the cost of postage for a
19 first-class letter weighing one ounce or less. When the only method
20 of entry is by telephone, the cost to the entrant of the telephone
21 call shall not exceed the cost of postage for a first-class letter
22 weighing one ounce or less for any reason, including (A) whether
23 any communication occurred during the call which was not related to
24 the gift enterprise or (B) the fact that the cost of the call to
25 the operator was greater than the cost to the entrant allowed under

1 this section.

2 (4) (a) The Department of Revenue may adopt and promulgate
3 rules and regulations necessary to carry out the operation of gift
4 enterprises.

5 (b) Whenever the department has reason to believe that a
6 gift enterprise is being operated in violation of this section or
7 the department's rules and regulations, it may bring an action in
8 the district court ~~of Lancaster County~~ in the name of and on behalf
9 of the people of the State of Nebraska against the operator of
10 the gift enterprise to enjoin the continued operation of such gift
11 enterprise anywhere in the state.

12 (5) (a) Any person, firm, corporation, association, or
13 agent or employee thereof who engages in any unlawful acts or
14 practices pursuant to this section or violates any of the rules and
15 regulations promulgated pursuant to this section shall be guilty of
16 a Class II misdemeanor.

17 (b) Any person, firm, corporation, association, or agent
18 or employee thereof who violates any provision of this section or
19 any of the rules and regulations adopted and promulgated pursuant
20 to this section shall be liable to pay a civil penalty of not
21 more than one thousand dollars imposed by the district court ~~of~~
22 ~~Lancaster County~~ for each such violation which shall ~~accrue to~~
23 ~~the permanent school fund.~~ be remitted to the State Treasurer for
24 distribution in accordance with Article VII, section 5, of the
25 Constitution of Nebraska. Each day of continued violation shall

1 constitute a separate offense or violation for purposes of this
2 section.

3 (6) In all proceedings initiated in any court or
4 otherwise under this section, the Attorney General or appropriate
5 county attorney shall prosecute and defend all such proceedings.

6 (7) This section shall not apply to any activity
7 authorized and regulated under the Nebraska Bingo Act, the Nebraska
8 County and City Lottery Act, the Nebraska Lottery and Raffle Act,
9 the Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery
10 and Raffle Act.

11 Sec. 7. Section 9-817, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 9-817 The director and any employee of the division, when
14 authorized by the director or Tax Commissioner, shall have the
15 power (1) to make a thorough investigation into all the records
16 and affairs of any person, organization, or corporation when, in
17 the judgment of the director, such investigation is necessary to
18 the proper performance of the division's duties and the efficient
19 enforcement of the laws, including the power to administer oaths,
20 (2) to examine under oath any person or any officer, employee, or
21 agent of any organization or corporation, (3) to compel by subpoena
22 the production of records, and (4) to compel by subpoena the
23 attendance of any person in this state to testify before the Tax
24 Commissioner or his or her designated representative. If any person
25 willfully refuses to testify or obey a subpoena, the director may

1 apply to a judge of the district court ~~of Lancaster County~~ for an
2 order directing such person to comply with the subpoena. Any person
3 who fails or refuses to obey such a court order shall be guilty of
4 contempt of court.

5 Sec. 8. Section 9-821, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 9-821 ~~The district court of Lancaster County shall have~~
8 ~~exclusive original jurisdiction of all~~ All legal proceedings,
9 except criminal actions, related to the administration,
10 enforcement, or fulfillment of the responsibilities, duties, or
11 functions of the division shall be considered contested cases
12 pursuant to the Administrative Procedure Act. An aggrieved party
13 seeking review of an order or decision of the Tax Commissioner
14 shall file an appeal with the district court ~~of Lancaster County~~
15 within thirty days after the date of such order or decision. ~~All~~
16 ~~such proceedings shall be considered contested cases pursuant to~~
17 ~~the Administrative Procedure Act.~~

18 Sec. 9. Section 9-832, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 9-832 The director may refuse to award a contract to
21 any applicant and may terminate the contract of or initiate an
22 administrative action to levy a fine against a lottery game
23 retailer who violates any provision of the State Lottery Act or
24 any rule or regulation adopted pursuant to the act. A fine may be
25 levied against a lottery game retailer by the Tax Commissioner and

1 shall not exceed one thousand dollars per violation. In determining
2 whether to impose a fine and the amount of the fine if any fine
3 is imposed, the Tax Commissioner shall take into consideration the
4 seriousness of the violation and the extent to which the lottery
5 game retailer derived financial gain as a result of the violation.
6 All money collected by the division as a fine shall be remitted
7 on a monthly basis to the State Treasurer for credit to the
8 ~~permanent school fund.~~ The division shall remit any fines collected
9 under this section to the State Treasurer on a monthly basis for
10 distribution in accordance with Article VII, section 5, of the
11 Constitution of Nebraska. Any fine imposed by the Tax Commissioner
12 and unpaid shall constitute a debt to the State of Nebraska which
13 may be collected by lien foreclosure or sued for and recovered in
14 any proper form of action, in the name of the State of Nebraska,
15 in the district court of the county in which the violator resides
16 or owns property. If the director decides to terminate a contract
17 or initiate an administrative action to levy a fine, the aggrieved
18 party shall be entitled to a hearing before the Tax Commissioner
19 or his or her designee by filing a written request with the Tax
20 Commissioner within ten days after notification of the director's
21 intention to terminate a contract or initiate an administrative
22 action to levy a fine. Upon receipt of such request, the Tax
23 Commissioner shall set a hearing date which shall be within thirty
24 days of receipt of the request and shall notify the aggrieved
25 party, in writing, of the time and place for the hearing. Such

1 notice shall be given as soon as the date is set and at least seven
2 days in advance of the hearing date. The Tax Commissioner or his
3 or her designee may stay the termination of a contract pending the
4 outcome of the hearing if so requested by the aggrieved party at
5 the time of filing the written request for hearing.

6 The Tax Commissioner may affirm, reverse, or modify
7 the action of the director. The order or decision of the Tax
8 Commissioner may be appealed ~~to the district court of Lancaster~~
9 ~~County~~ in the manner prescribed in section 9-821.

10 Sec. 10. Section 12-1119, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 12-1119 Whenever the director has reasonable cause to
13 believe that any person, whether licensed or not, is violating
14 any provision of the Burial Pre-Need Sale Act or any rule or
15 regulation adopted and promulgated pursuant to such act, he or she
16 may, in addition to all other actions allowed, bring an action in
17 the district court ~~of Lancaster County~~ to enjoin such person from
18 engaging in or continuing such violation or from doing any act in
19 furtherance of such violation. In any such action, the district
20 court may enter any order, judgment, or decree concerning temporary
21 or permanent relief as it deems proper based upon the facts and
22 circumstances presented to it by the director.

23 Sec. 11. Section 13-2042, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 13-2042 (1) A disposal fee of one dollar and twenty-five

1 cents is imposed for each six cubic yards of uncompacted solid
2 waste, one dollar and twenty-five cents for each three cubic yards
3 of compacted solid waste, or one dollar and twenty-five cents
4 per ton of solid waste disposed of at landfills regulated by the
5 department. Each operator of a landfill disposal facility shall
6 make the fee payment quarterly. The fee shall be paid quarterly to
7 the department on or before the forty-fifth day following the end
8 of each quarter. For purposes of this section, landfill has the
9 same definition as municipal solid waste landfill unit in 40 C.F.R.
10 part 258, subpart A, section 258.2.

11 (2) Each fee payment shall be accompanied by a form
12 prepared and furnished by the department and completed by the
13 permitholder. The form shall state the total volume of solid waste
14 disposed of at that facility during the payment period and shall
15 provide any other information deemed necessary by the department.
16 The form shall be signed by the permitholder.

17 (3) If a permitholder fails to make a timely payment of
18 the fee, he or she shall pay interest on the unpaid amount at the
19 rate specified in section 45-104.02, as such rate may from time to
20 time be adjusted.

21 (4) This section shall not apply to a site used solely
22 for the reclamation of land through the introduction of landscaping
23 rubble or inert material.

24 (5) Fifty percent of the total of such fees collected in
25 each quarter shall be remitted to the State Treasurer for credit

1 to the Integrated Solid Waste Management Cash Fund and shall be
2 used by the department to cover the direct and indirect costs
3 of responding to spills or other environmental emergencies, of
4 regulating, investigating, remediating, and monitoring facilities
5 during and after operation of facilities, or of performance of
6 regulated activities under the Integrated Solid Waste Management
7 Act, the Livestock Waste Management Act, the Nebraska Litter
8 Reduction and Recycling Act, and the Waste Reduction and Recycling
9 Incentive Act. The department may seek recovery of expenses paid
10 from the fund for responding to spills or other environmental
11 emergencies or for investigation, remediation, and monitoring of
12 a facility from any person who owned, operated, or used the
13 facility in violation of the Integrated Solid Waste Management
14 Act, the Livestock Waste Management Act, the Nebraska Litter
15 Reduction and Recycling Act, and the Waste Reduction and Recycling
16 Incentive Act in a civil action filed in the district court, ~~of~~
17 ~~Lancaster County~~. Of the amount credited to the Integrated Solid
18 Waste Management Cash Fund, the department may disburse amounts
19 to political subdivisions for costs incurred in response to and
20 remediation of any solid waste disposed of or abandoned at dump
21 sites or discrete locations along public roadways or ditches and on
22 any contiguous area affected by such disposal or abandonment. Such
23 reimbursement shall be by application to the department on forms
24 prescribed by the department. The department shall prepare and make
25 available a schedule of eligible costs and application procedures

1 which may include a requirement of a demonstration of preventive
2 measures to be taken to discourage future dumping. The department
3 may not disburse to political subdivisions an amount which in the
4 aggregate exceeds five percent of total revenue from the disposal
5 fees collected pursuant to this section in the preceding fiscal
6 year. These disbursements shall be made on a fiscal-year basis,
7 and applications received after funds for this purpose have been
8 exhausted may be eligible during the next fiscal year but are
9 not an obligation of the state. Any eligible costs incurred by a
10 political subdivision which are not funded due to a lack of funds
11 shall not be considered an obligation of the state. In disbursing
12 funds under this section, the director shall make efforts to ensure
13 equal geographic distribution throughout the state and may deny
14 reimbursements in order to accomplish this goal.

15 (6) The remaining fifty percent of the total of such fees
16 collected per quarter shall be remitted to the State Treasurer for
17 credit to the Waste Reduction and Recycling Incentive Fund. For
18 purposes of determining the total fees collected, any amount of
19 fees rebated pursuant to section 13-2042.01 shall be included as if
20 the fees had not been rebated, and the amount of the fees rebated
21 pursuant to such section shall be deducted from the amount to be
22 credited to the Waste Reduction and Recycling Incentive Fund.

23 (7) The council shall adopt and promulgate rules and
24 regulations for the distribution of grants under subsection (6)
25 of this section from the proceeds of the fees imposed by

1 this section to counties, municipalities, and agencies for the
2 purposes of planning and implementing facilities and systems to
3 further the goals of the Integrated Solid Waste Management Act.
4 The fees collected pursuant to this section shall not be used
5 as grant proceeds to fund landfill closure site assessments,
6 closure, monitoring, or investigative or corrective action costs
7 for existing landfills or landfills already closed prior to July
8 15, 1992. The rules and regulations shall base the awarding of
9 grants on a project's reflection of the integrated solid waste
10 management policy and hierarchy established in section 13-2018, the
11 proposed amount of local matching funds, and community need.

12 Sec. 12. Section 21-315, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 21-315 The Attorney General, on request of the Secretary
15 of State, shall institute ~~such an~~ an action pursuant to section 21-314
16 in the district court of ~~Lancaster County, or any other~~ county
17 in the state in which such corporation has an office or place of
18 business.

19 Sec. 13. Section 21-317, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 21-317 If a corporation, organized under the laws of
22 Nebraska, for profit or not for profit, required to file the report
23 and pay the fee prescribed in sections 21-301 to 21-325, fails or
24 neglects to make such report or pay such fee for thirty days after
25 the expiration of the time limited by ~~said~~ such sections, and such

1 default is willful and intentional, the Attorney General, on the
2 request of the Secretary of State, shall bring an action in the
3 district court of ~~Lancaster County~~, or any county in this state in
4 which such corporation is located, to forfeit and annul the charter
5 of such corporation. If the court is satisfied that such default is
6 willful and intentional, it may revoke and annul such charter.

7 Sec. 14. Section 21-323.02, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 21-323.02 (1) If the Secretary of State denies a
10 corporation's application for reinstatement following automatic
11 dissolution under section 21-323, he or she shall serve the
12 corporation under section 21-2034 with a written notice that
13 explains the reason or reasons for denial.

14 (2) The corporation may appeal the denial of
15 reinstatement to the district court of ~~Lancaster County~~ within
16 thirty days after service of the notice of denial is perfected.
17 The corporation shall appeal by petitioning the court to set
18 aside the dissolution and attaching to the petition copies of the
19 Secretary of State's certificate of dissolution, the corporation's
20 application for reinstatement, and the Secretary of State's notice
21 of denial.

22 (3) The court may summarily order the Secretary of State
23 to reinstate the dissolved corporation or may take other action the
24 court considers appropriate.

25 (4) The court's final decision may be appealed as in

1 other civil proceedings.

2 Sec. 15. Section 21-325.02, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 21-325.02 (1) If the Secretary of State denies a foreign
5 corporation's application for reinstatement following revocation
6 of its certificate of authority under section 21-325, he or she
7 shall serve the foreign corporation under section 21-20,177 with a
8 written notice that explains the reason or reasons for denial.

9 (2) The foreign corporation may appeal the denial
10 of reinstatement to the district court ~~of Lancaster County~~
11 within thirty days after service of the notice of denial is
12 perfected under section 21-20,177. The foreign corporation shall
13 appeal by petitioning the court to set aside the revocation and
14 attaching to the petition copies of the Secretary of State's
15 certificate of revocation, the foreign corporation's application
16 for reinstatement, and the Secretary of State's notice of denial.

17 (3) The court may summarily order the Secretary of State
18 to reinstate the certificate of authority or may take any other
19 action the court considers appropriate.

20 (4) The court's final decision may be appealed as in
21 other civil proceedings.

22 Sec. 16. Section 21-1909, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 21-1909 (a) If the Secretary of State refuses to file a
25 document delivered for filing to the Secretary of State's office,

1 the domestic or foreign corporation may appeal the refusal to
2 the district court ~~of Lancaster County~~. The appeal is commenced
3 by petitioning the court to compel filing the document and by
4 attaching to the petition the document and the Secretary of State's
5 explanation for the refusal to file.

6 (b) The district court may summarily order the Secretary
7 of State to file the document or take other action the court
8 considers appropriate.

9 (c) The court's final decision may be appealed as in
10 other civil proceedings.

11 Sec. 17. Section 21-19,140, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 21-19,140 (a) The Secretary of State, upon denying
14 a corporation's application for reinstatement following
15 administrative dissolution, shall serve the corporation under
16 section 21-1937 with a written notice that explains the reason or
17 reasons for denial.

18 (b) The corporation may appeal the denial of
19 reinstatement to the district court ~~of Lancaster County~~ within
20 ninety days after service of the notice of denial is perfected.
21 The corporation appeals by petitioning the district court to set
22 aside the dissolution and attaching to the petition copies of the
23 Secretary of State's certificate of dissolution, the corporation's
24 application for reinstatement, and the Secretary of State's notice
25 of denial.

1 (c) The district court may summarily order the Secretary
2 of State to reinstate the dissolved corporation or may take other
3 action the court considers appropriate.

4 (d) The district court's final decision may be appealed
5 as in other civil proceedings.

6 Sec. 18. Section 21-19,142, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 21-19,142 (a) Venue for a proceeding by the Attorney
9 General to dissolve a corporation lies in the district court in
10 the county where a corporation's principal office (or, if none in
11 this state, its registered office) is or was last located, ~~or the~~
12 ~~district court of Lancaster County.~~ Venue for a proceeding brought
13 by any other party named in section 21-19,141 lies in the county
14 where a corporation's principal office (or, if none in this state,
15 its registered office) is or was last located.

16 (b) It is not necessary to make directors or members
17 parties to a proceeding to dissolve a corporation unless relief is
18 sought against them individually.

19 (c) The district court in a proceeding brought to
20 dissolve a corporation may issue injunctions, appoint a receiver
21 or custodian pendente lite with all powers and duties the court
22 directs, take other action required to preserve the corporate
23 assets wherever located, and carry on the activities of the
24 corporation until a full hearing can be held.

25 (d) A person other than the Attorney General who brings

1 an involuntary dissolution proceeding for a public benefit or
2 religious corporation shall forthwith give written notice of the
3 proceeding to the Attorney General who may intervene.

4 Sec. 19. Section 21-19,160, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 21-19,160 (a) The Secretary of State, upon denying
7 a foreign corporation's application for reinstatement following
8 revocation of its certificate of authority, shall serve the foreign
9 corporation under section 21-19,155 with a written notice that
10 explains the reason or reasons for denial.

11 (b) The foreign corporation may appeal the denial of
12 reinstatement to the district court ~~of Lancaster County~~ within
13 thirty days after the service of the notice of denial is
14 perfected under section 21-19,155. The foreign corporation appeals
15 by petitioning the district court to set aside the revocation
16 and attaching to the petition copies of the Secretary of State's
17 certificate of revocation, the foreign corporation's application
18 for reinstatement, and the Secretary of State's notice of denial.

19 (c) The district court may summarily order the Secretary
20 of State to reinstate the certificate of authority or may take any
21 other action it considers appropriate.

22 (d) The district court's final decision may be appealed
23 as in other civil proceedings.

24 Sec. 20. Section 21-2009, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 21-2009 (1) If the Secretary of State refuses to file a
 2 document delivered to his or her office for filing, the domestic or
 3 foreign corporation may appeal the refusal within thirty days after
 4 the return of the document to the district court ~~of Lancaster~~
 5 ~~County~~. The appeal shall be commenced by petitioning the court to
 6 compel filing the document and by attaching to the petition the
 7 document and the Secretary of State's explanation of his or her
 8 refusal to file.

9 (2) The court may summarily order the Secretary of State
 10 to file the document or take other action the court considers
 11 appropriate.

12 (3) The court's final decision may be appealed as in
 13 other civil proceedings.

14 Sec. 21. Section 21-20,161, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 21-20,161 (1) If the Secretary of State denies
 17 a corporation's application for reinstatement following
 18 administrative dissolution, he or she shall serve the corporation
 19 under section 21-2034 with a written notice that explains the
 20 reason or reasons for denial.

21 (2) The corporation may appeal the denial of
 22 reinstatement to the district court ~~of Lancaster County~~ within
 23 thirty days after service of the notice of denial is perfected.
 24 The corporation shall appeal by petitioning the court to set
 25 aside the dissolution and attaching to the petition copies of the

1 Secretary of State's certificate of dissolution, the corporation's
2 application for reinstatement, and the Secretary of State's notice
3 of denial.

4 (3) The court may summarily order the Secretary of State
5 to reinstate the dissolved corporation or may take other action the
6 court considers appropriate.

7 (4) The court's final decision may be appealed as in
8 other civil proceedings.

9 Sec. 22. Section 21-20,163, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 21-20,163 (1) Venue for a proceeding by the Attorney
12 General to dissolve a corporation shall lie in the district court
13 of the county where the corporation's principal office, or, if none
14 in this state, its registered office, is located. ~~or the district~~
15 ~~court of Lancaster County.~~ Venue for a proceeding brought by any
16 other party named in section 21-20,162 shall lie in the district
17 court of the county where the corporation's principal office, or,
18 if none in this state, its registered office, is or was last
19 located.

20 (2) It shall not be necessary to make shareholders
21 parties to a proceeding to dissolve a corporation unless relief is
22 sought against them individually.

23 (3) A court in a proceeding brought to dissolve a
24 corporation may issue injunctions, appoint a receiver or custodian
25 pendente lite with all powers and duties the court directs, take

1 other action required to preserve the corporate assets wherever
2 located, and carry on the business of the corporation until a full
3 hearing can be held.

4 (4) Within ten days of the commencement of a proceeding
5 under subdivision (2) of section 21-20,162 to dissolve a
6 corporation that has no shares listed on a national securities
7 exchange or regularly traded in a market maintained by one or
8 more members of a national securities exchange, the corporation
9 shall send to all shareholders, other than the petitioner, a notice
10 stating that the shareholders are entitled to avoid the dissolution
11 of the corporation by electing to purchase the petitioner's shares
12 under section 21-20,166 and accompanied by a copy of such section.

13 Sec. 23. Section 21-20,181, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 21-20,181 (1) If the Secretary of State denies a foreign
16 corporation's application for reinstatement following revocation of
17 its certificate of authority under section 21-20,180, he or she
18 shall serve the foreign corporation under section 21-20,177 with a
19 written notice that explains the reason or reasons for denial.

20 (2) The foreign corporation may appeal the denial
21 of reinstatement to the district court of ~~Lancaster County~~
22 within thirty days after service of the notice of denial is
23 perfected under section 21-20,177. The foreign corporation shall
24 appeal by petitioning the court to set aside the revocation and
25 attaching to the petition copies of the Secretary of State's

1 certificate of revocation, the foreign corporation's application
2 for reinstatement, and the Secretary of State's notice of denial.

3 (3) The court may summarily order the Secretary of State
4 to reinstate the certificate of authority or may take any other
5 action the court considers appropriate.

6 (4) The court's final decision may be appealed as in
7 other civil proceedings.

8 Sec. 24. Section 21-2215, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 21-2215 Every action for the involuntary dissolution of
11 a corporation failing to comply with the provisions of section
12 21-2213 shall be commenced by the Attorney General ~~either~~ in the
13 district court of the county in which the registered office of
14 the corporation is situated, ~~or in the district court of Lancaster~~
15 ~~County~~. Summons shall issue and be served as in other civil
16 actions. If process is returned not found, the Attorney General
17 shall cause publication to be made as in other civil cases in some
18 newspaper published in the county where the last-known registered
19 office of the corporation is situated, containing a notice of
20 pendency of such action, the title of the court, the title of the
21 action, and the date on and after which default may be entered. The
22 Attorney General shall cause a copy of such notice to be mailed
23 to the corporation at its last-known registered office or mailing
24 address within ten days after the first publication thereof.
25 The certificate of the Attorney General of the mailing of such

1 notice shall be prima facie evidence thereof. Such notice shall be
2 published at least once each week for two successive weeks, and the
3 first publication thereof may begin at any time after the summons
4 has been returned. Unless a corporation shall have been served with
5 summons, no default shall be taken against it earlier than thirty
6 days after the first publication of such notice.

7 Sec. 25. Section 23-2522, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 23-2522 The powers and duties of the personnel policy
10 board shall be:

11 (1) To review and make recommendations to the board of
12 county commissioners on the personnel rules and regulations and any
13 amendments thereto prior to the approval by the commissioners;

14 (2) To advise and assist the personnel officer on matters
15 of personnel policy, administration, and practice;

16 (3) To cooperate with and advise the personnel officer in
17 fostering interest and cooperation of institutions of learning and
18 civic, professional, and employee organizations in the improvement
19 of personnel standards and the development of high public regard
20 for the county as an employer and for careers in the county
21 service;

22 (4) To require the personnel officer to make or to make
23 on its own initiative any investigation which it may consider
24 necessary concerning the management of personnel in the county
25 service;

1 (5) To review any grievance or case of disciplinary
2 action of a classified service employee when appealed by
3 such employee in accordance with approved personnel rules and
4 regulations and issue a determination that is binding on all
5 parties concerned;

6 (6) To issue subpoenas to compel the attendance of county
7 employees as witnesses and the production of documents and to
8 administer oaths, take testimony, hear proofs, and receive exhibits
9 in evidence in connection with any of the powers and duties of such
10 board. In case of a refusal to obey a subpoena issued to any county
11 employee, the personnel policy board on its own motion, or a party
12 to the proceedings, may make application to the district court of
13 ~~Lancaster County~~ for an enforcement order, and any failure to obey
14 such order may be punished by such court as contempt thereof;

15 (7) To make annual reports and recommendations to the
16 board of county commissioners; and

17 (8) To perform such other duties as may be expressly
18 set forth in the County Civil Service Act and in the regulations
19 adopted pursuant thereto.

20 Sec. 26. Section 25-21,206, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 25-21,206 The state may be sued in the district court of
23 ~~Lancaster County~~ in any matter founded upon or growing out of a
24 contract, express or implied, originally authorized or subsequently
25 ratified by the Legislature, or founded upon any law of the state.

1 The complaint in such a case shall be as provided in section
2 25-21,202, and summons shall issue and be served in the same
3 manner as provided in section 25-21,203. The rules of pleading and
4 practice in regard to other civil actions in the district court
5 shall be observed in all actions by or against the state, as far
6 as applicable except as otherwise provided in sections 25-21,201
7 to 25-21,218. If an action is commenced in a county other than
8 as specified in this section or section 25-21,203, the court in
9 which the action has been commenced shall have jurisdiction over
10 such action, but upon timely motion by a defendant, the court
11 shall transfer the action to the proper court in the county in
12 which the action should or might have been commenced as provided
13 in this section or section 25-21,203. The court in the county
14 to which the action is transferred, in its discretion, may order
15 the plaintiff to pay to the defendant all reasonable expenses,
16 including attorney's fees of the defendant or defendants, incurred
17 because of the improper venue or in proceedings to transfer such
18 action.

19 Sec. 27. Section 25-21,264, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 25-21,264 The district court of the county in which the
22 facility is located ~~or, if all parties agree, the district court of~~
23 ~~Lancaster County~~ shall have jurisdiction of actions brought under
24 section 25-21,259.

25 Sec. 28. Section 28-738, Revised Statutes Supplement,

1 2007, is amended to read:

2 28-738 A person whose request under section 28-737 is
3 denied may apply to the district court ~~of Lancaster County~~ for
4 an order compelling disclosure of a summary of the findings and
5 information by the department. The application shall set forth
6 with reasonable particularity factors supporting the application.
7 Actions under this section shall be set for immediate hearing, and
8 subsequent proceedings in such actions shall be accorded priority
9 by the appellate courts. After the district court has reviewed the
10 specific findings and information in camera, the court shall issue
11 an order compelling disclosure unless the court finds that one or
12 more of the circumstances set out in section 28-737 exist.

13 Sec. 29. Section 29-3528, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-3528 Whenever any officer or employee of the state,
16 its agencies, or its political subdivisions, or whenever any state
17 agency or any political subdivision or its agencies fails to
18 comply with the requirements of sections 29-209, 29-210, 29-3501
19 to 29-3528, and 81-1423 or of regulations lawfully adopted to
20 implement sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423,
21 any person aggrieved may bring an action, including but not
22 limited to an action for mandamus, to compel compliance. Such ~~and~~
23 ~~such~~ action may be brought in the district court of any district in
24 which the records involved are located ~~or in the district court of~~
25 ~~Lancaster County~~. The commission may request the Attorney General

1 to bring such action.

2 Sec. 30. Section 37-708.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 37-708.01 (1) The validity of any rule or regulation
5 adopted by the Department of Natural Resources pursuant to sections
6 37-701 to 37-708 may be determined pursuant to section 84-911.

7 (2) Any person aggrieved by any other order or act of the
8 department or commission pursuant to its authority under sections
9 37-701 to 37-708 may, within thirty days after notice thereof,
10 file a petition in the district court of the county in which the
11 aggrieved person resides or, if the aggrieved person is not a
12 resident of Nebraska, in the district court of ~~Lancaster County,~~
13 the state having jurisdiction over such person, for review. The
14 court shall summarily hear the petition as a case in equity without
15 a jury and may order only declaratory or prospective injunctive
16 relief with regard to such order or act.

17 (3) Except as provided in subsection (1) of this section,
18 the appeal procedures described in the Administrative Procedure Act
19 shall not apply to actions taken pursuant to sections 37-701 to
20 37-708.

21 (4) The appeal procedures described in sections 61-206
22 and 61-207 do not apply to actions taken pursuant to sections
23 37-701 to 37-708.

24 Sec. 31. Section 44-1528, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-1528 (1) Whenever the director has reason to believe
2 that any insurer has engaged or is engaging in this state in
3 any unfair trade practice whether or not defined in the Unfair
4 Insurance Trade Practices Act and that a proceeding by him or her
5 in respect thereto would be to the interest of the public, he or
6 she shall issue and serve upon such insurer a statement of the
7 charges in that respect and a notice of a hearing thereon to be
8 held at a time and place fixed in the notice, which shall not be
9 less than ten days after the date of the service thereof.

10 (2) At the time and place fixed for such hearing, such
11 insurer shall have an opportunity to be heard and to show cause why
12 an order should not be made by the director requiring such insurer
13 to cease and desist from the acts or practices so complained of.
14 Upon good cause shown, the director shall permit any person to
15 intervene, appear, and be heard at such hearing by counsel or in
16 person.

17 (3) Nothing contained in the Unfair Insurance Trade
18 Practices Act shall require the observance at any such hearing of
19 formal rules of pleading or evidence.

20 (4) The director, upon such hearing, may administer
21 oaths, examine and cross-examine witnesses, receive oral
22 and documentary evidence, subpoena witnesses, compel their
23 attendance, and require the production of books, papers, records,
24 correspondence, or other documents which he or she deems relevant
25 to the inquiry. The director may, and upon the request of any

1 interested party shall, cause to be made a stenographic record of
2 all the evidence and all the proceedings had at such hearing. If no
3 stenographic record is made and if a judicial review is sought, the
4 director shall prepare a statement of the evidence and proceeding
5 for use on review. In case of a refusal of any person to comply
6 with any subpoena issued under this section or to testify with
7 respect to any matter concerning which he or she may be lawfully
8 interrogated, the district court of ~~Lancaster County~~ or the county
9 where such party resides, on application of the director, may
10 require such person to comply with such subpoena and to testify,
11 and any failure to obey any such order of the court may be punished
12 by the court as a contempt thereof.

13 (5) Statements of charges, notices, orders, and other
14 processes of the director under the act may be served by anyone
15 duly authorized by the director, either in the manner provided by
16 law for service of process in civil actions or by mailing a copy
17 thereof to the person affected by such statement, notice, order, or
18 other process at his, her, or its residence or principal office or
19 place of business by either certified or registered mail, return
20 receipt requested. The verified return by the person so serving
21 such statement, notice, order, or other process, setting forth
22 the manner of such service, shall be proof of the same, and the
23 return receipt for such statement, notice, order, or other process,
24 registered and mailed, shall be proof of the service of the same.

25 Sec. 32. Section 44-2140, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-2140 Whenever it appears to the director that any
3 insurer or any director, officer, employee, or agent thereof has
4 committed or is about to commit a violation of the Insurance
5 Holding Company System Act or of any rule, regulation, or order
6 of the director, the director may apply to the district court of
7 ~~Lancaster County~~ for an order enjoining such insurer, director,
8 officer, employee, or agent from violating or continuing to violate
9 the act or any such rule, regulation, or order and for such other
10 equitable relief as the nature of the case and the interest of the
11 insurer's policyholders, creditors, and shareholders or the public
12 may require.

13 Sec. 33. Section 44-2141, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-2141 No security which is the subject of any agreement
16 or arrangement regarding acquisition, or which is acquired or to be
17 acquired, in contravention of the Insurance Holding Company System
18 Act or of any rule, regulation, or order of the director may be
19 voted at any shareholder's meeting or may be counted for quorum
20 purposes, and any action of shareholders requiring the affirmative
21 vote of a percentage of shares may be taken as though such
22 securities were not issued and outstanding, but no action taken
23 at any such meeting shall be invalidated by the voting of such
24 securities unless the action would materially affect control of the
25 insurer or unless the courts of this state have so ordered. If an

1 insurer or the director has reason to believe that any security of
2 the insurer has been or is about to be acquired in contravention
3 of the act or of any rule, regulation, or order of the director,
4 the insurer or the director may apply to the district court
5 ~~of Lancaster County~~ for an order to enjoin any offer, request,
6 invitation, agreement, or acquisition made in contravention of
7 sections 44-2126 to 44-2130 or any rule, regulation, or order of
8 the director to enjoin the voting of any security so acquired,
9 to void any vote of such security already cast at any meeting of
10 shareholders, and for such other equitable relief as the nature
11 of the case and the interest of the insurer's policyholders,
12 creditors, and shareholders or the public may require.

13 Sec. 34. Section 44-2142, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-2142 In any case when a person has acquired or is
16 proposing to acquire any voting securities in violation of the
17 Insurance Holding Company System Act or any rule, regulation, or
18 order of the director, the district court ~~of Lancaster County~~
19 may, on such notice as the court deems appropriate, upon the
20 application of the insurer or the director seize or sequester
21 any voting securities of the insurer owned directly or indirectly
22 by such person and issue such order with respect thereto as may
23 be appropriate to effectuate the act. Notwithstanding any other
24 provisions of law, for purposes of the act the sites of the
25 ownership of the securities of domestic insurers shall be deemed to

1 be in this state.

2 Sec. 35. Section 44-2151, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-2151 Any person aggrieved by any act, determination,
5 order, or other action of the director pursuant to the Insurance
6 Holding Company System Act may appeal. The appeal shall be in
7 accordance with the Administrative Procedure Act.

8 Any person aggrieved by any failure of the director to
9 act or make a determination required by the Insurance Holding
10 Company System Act may petition the district court ~~of Lancaster~~
11 ~~County~~ for a writ in the nature of a mandamus or a peremptory
12 mandamus directing the director to act or make such determination
13 forthwith.

14 Sec. 36. Section 44-2707, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-2707 In addition to the powers and duties enumerated
17 in the Nebraska Life and Health Insurance Guaranty Association Act:

18 (1) If a member insurer is an impaired insurer, the
19 association may, at its discretion and subject to any conditions
20 imposed by the association that do not impair the contractual
21 obligations of the impaired insurer and that are approved by the
22 director:

23 (a) Guarantee, assume, or reinsure, or cause to be
24 guaranteed, assumed, or reinsured, all the covered policies of the
25 impaired insurer; and

1 (b) Provide such money, pledges, loans, notes,
2 guarantees, or other means as are proper to effectuate subdivision
3 (1)(a) of this section and assure payment of the contractual
4 obligations of the impaired insurer pending action under
5 subdivision (1)(a) of this section;

6 (2) If a member insurer is an insolvent insurer, the
7 association shall, in its discretion, either:

8 (a)(i)(A) Guarantee, assume, or reinsure, or cause to be
9 guaranteed, assumed, or reinsured, the policies or contracts of the
10 insolvent insurer; or

11 (B) Assure payment of the contractual obligations of the
12 insolvent insurer; and

13 (ii) Provide such money, pledges, notes, guarantees,
14 or other means as are reasonably necessary to discharge the
15 association's duties; or

16 (b) Provide benefits in accordance with the following
17 provisions:

18 (i) With respect to life and health insurance policies
19 and annuities, assure payment of benefits for premiums identical
20 to the premiums and benefits, except for terms of conversion and
21 renewability, that would have been payable under the policies or
22 contracts of the insolvent insurer for claims incurred:

23 (A) With respect to group policies and contracts, not
24 later than the earlier of the next renewal date under these
25 policies or contracts or forty-five days but not less than thirty

1 days after the date on which the association becomes obligated with
2 respect to the policies and contracts;

3 (B) With respect to nongroup policies, contracts, and
4 annuities, not later than the earlier of the next renewal date
5 under the policies or contracts or one year but not less than
6 thirty days after the date on which the association becomes
7 obligated with respect to the policies or contracts;

8 (ii) Make diligent efforts to provide all known insureds
9 or annuitants for nongroup policies and contracts, or group policy
10 owners with respect to group policies and contracts, thirty days'
11 notice of the termination made pursuant to subdivision (2)(b)(i) of
12 this section of the benefits provided;

13 (iii) With respect to nongroup life and health insurance
14 policies and annuities covered by the association, make available
15 to each known insured or annuitant, or owner if other than the
16 insured or annuitant, and with respect to an individual formerly
17 insured or formerly an annuitant under a group policy who is not
18 eligible for replacement group coverage, make available substitute
19 coverage on an individual basis in accordance with the provisions
20 of subdivision (2)(b)(iv) of this section if the insureds or
21 annuitants had a right under law or the terminated policy or
22 annuity to convert coverage to individual coverage or to continue
23 an individual policy or annuity in force until a specified age
24 or for a specified time, during which the insurer had no right
25 unilaterally to make changes in any provision of the policy or

1 annuity or had a right only to make changes in premium by class;

2 (iv) (A) In providing the substitute coverage required
3 under subdivision (2) (b) (iii) of this section, the association may
4 offer either to reissue the terminated coverage or to issue an
5 alternative policy.

6 (B) Alternative or reissued policies shall be offered
7 without requiring evidence of insurability and shall not provide
8 for any waiting period or exclusion that would not have applied
9 under the terminated policy.

10 (C) The association may reinsure any alternative or
11 reissued policy;

12 (v) (A) Alternative policies adopted by the association
13 shall be subject to the approval of the domiciliary insurance
14 commissioner and the receivership court. The association may adopt
15 alternative policies of various types for future issuance without
16 regard to any particular impairment or insolvency.

17 (B) Alternative policies shall contain at least the
18 minimum statutory provisions required in this state and provide
19 benefits that shall not be unreasonable in relation to the premium
20 charged. The association shall set the premium in accordance with a
21 table of rates that it shall adopt. The premium shall reflect the
22 amount of insurance to be provided and the age and class of risk of
23 each insured but shall not reflect any changes in the health of the
24 insured after the original policy was last underwritten.

25 (C) Any alternative policy issued by the association

1 shall provide coverage of a type similar to that of the policy
2 issued by the impaired or insolvent insurer, as determined by the
3 association;

4 (vi) If the association elects to reissue terminated
5 coverage at a premium rate different from that charged under the
6 terminated policy, the premium shall be set by the association in
7 accordance with the amount of insurance provided and the age and
8 class of risk, subject to approval of the domiciliary insurance
9 commissioner and the receivership court;

10 (vii) The association's obligations with respect to
11 coverage under any policy of the impaired or insolvent insurer
12 or under any reissued or alternative policy shall cease on the date
13 the coverage or policy is replaced by another similar policy by the
14 policy owner, the insured, or the association; and

15 (viii) When proceeding under subdivision (2)(b) of this
16 section with respect to a policy or contract carrying guaranteed
17 minimum interest rates, the association shall assure the payment
18 or crediting of a rate of interest consistent with subdivision
19 (2)(b)(iii) of section 44-2703;

20 (3) Nonpayment of premiums within thirty-one days after
21 the date required under the terms of any guaranteed, assumed,
22 alternative, or reissued policy or contract or substitute coverage
23 terminates the association's obligations under the policy or
24 coverage under the act with respect to the policy or coverage,
25 except with respect to any claims incurred or any net cash

1 surrender value which may be due in accordance with the provisions
2 of the act;

3 (4) Premiums due for coverage after entry of an order
4 of liquidation of an insolvent insurer shall belong to and be
5 payable at the direction of the association. The association shall
6 be liable for unearned premiums due to policy or contract owners
7 arising after the entry of the order;

8 (5) The protection provided by the act shall not apply if
9 guaranty protection is provided to residents of this state by the
10 laws of the domiciliary state or jurisdiction of the impaired or
11 insolvent insurer other than this state;

12 (6) In carrying out its duties under subdivision (2) of
13 this section, the association may, subject to approval by a court
14 in this state:

15 (a) Impose permanent policy or contract liens in
16 connection with a guarantee, assumption, or reinsurance agreement
17 if:

18 (i) The association finds that the amounts which can be
19 assessed under the act are less than the amounts needed to assure
20 full and prompt performance of the association's duties under the
21 act; or

22 (ii) That the economic or financial conditions as they
23 affect member insurers are sufficiently adverse to render the
24 imposition of such permanent policy or contract liens, to be in the
25 public interest; and

1 (b) Impose temporary moratoriums or liens on payments of
2 cash values and policy loans or any other right to withdraw funds
3 held in conjunction with policies or contracts in addition to any
4 contractual provisions for deferral of cash or policy loan value.

5 If the receivership court imposes a temporary moratorium
6 or moratorium charge on payment of cash values or policy loans
7 or on any other right to withdraw funds held in conjunction
8 with policies or contracts out of the assets of the impaired
9 or insolvent insurer, the association may defer the payment of
10 cash values, policy loans, or other rights by the association for
11 the period of the moratorium or moratorium charge imposed by the
12 receivership court, except for claims covered by the association to
13 be paid in accordance with a hardship procedure established by the
14 liquidator or rehabilitator and approved by the receivership court;

15 (7) A deposit in this state which is held pursuant to
16 law or required by the director for the benefit of creditors and
17 policy owners and not turned over to the domiciliary liquidator
18 upon the entry of a final order of liquidation or order approving
19 a rehabilitation plan of an insurer domiciled in this state or in
20 a reciprocal state, pursuant to section 44-4852, shall be promptly
21 paid to the association. The association shall be entitled to
22 retain a portion of such amount equal to the percentage determined
23 by dividing the aggregate amount of policy owners' claims related
24 to that insolvency for which the association has provided statutory
25 benefits by the aggregate amount of all policy owners' claims in

1 this state related to that insolvency. The association shall remit
2 to the domiciliary receiver the amount so paid to the association
3 and not retained pursuant to this subdivision. Any amount paid to
4 the association less the amount not retained by it shall be treated
5 as a distribution of estate assets pursuant to section 44-4834
6 or similar provision of the state of domicile of the impaired or
7 insolvent insurer;

8 (8) If the association fails to act within a reasonable
9 period of time with respect to an insolvent insurer, as provided in
10 subdivision (2) of this section, the director shall have the powers
11 and duties of the association under the act with respect to the
12 insolvent insurer;

13 (9) At the request of the director, the association
14 may give assistance and advice to the director concerning
15 rehabilitation, payment of claims, continuance of coverage, or the
16 performance of other contractual obligations of an impaired or
17 insolvent insurer;

18 (10) The association shall have standing to appear
19 before any court or administrative agency in this state with
20 jurisdiction over an impaired or insolvent insurer concerning which
21 the association is or may become obligated under the act or
22 with jurisdiction over any person or property against which the
23 association may have rights through subrogation or other basis.
24 Such standing shall extend to all matters germane to the powers
25 and duties of the association, including, but not limited to,

1 proposals for reinsuring or guaranteeing the policies or contracts
2 and contractual obligations of the impaired or insolvent insurer
3 and the determination of the covered policies and contractual
4 obligations. The association shall also have the right to appear
5 or intervene before a court or agency in another state with
6 jurisdiction over an impaired or insolvent insurer for which the
7 association is or may become obligated or with jurisdiction over
8 any person against whom the association may have rights through
9 subrogation or otherwise;

10 (11) (a) Any person receiving benefits under the act shall
11 be deemed to have assigned his or her rights under and any
12 causes of action against any person for losses arising under the
13 covered policy to the association to the extent of the benefits
14 received because of the act whether the benefits are payments of
15 contractual obligations or continuation of coverage or provision of
16 substitute or alternative coverage. The association may require an
17 assignment to it of such rights by any payee, policy or contract
18 owner, certificate holder, beneficiary, insured, or annuitant as
19 a condition precedent to the receipt of any rights or benefits
20 conferred by such act upon such person.

21 (b) The subrogation rights of the association under this
22 subdivision shall have the same priority against the assets of
23 the impaired or insolvent insurer as that possessed by the person
24 entitled to receive benefits under such act.

25 (c) In addition to subdivisions (11) (a) and (b) of

1 this section, the association shall have all common-law rights of
2 subrogation and any other equitable or legal remedy that would
3 have been available to the impaired or insolvent insurer or owner,
4 beneficiary, or payee of a policy or contract with respect to the
5 policy or contracts. Such common-law rights and equitable or legal
6 remedies include, in the case of a structured settlement annuity,
7 any rights of the owner, beneficiary, or payee of the annuity,
8 to the extent of benefits received pursuant to the act, against
9 a person originally or by succession responsible for the losses
10 arising from the personal injury relating to the annuity or payment
11 therefor. Nothing in this subdivision shall include any such person
12 responsible solely by reason of serving as an assignee in respect
13 of a qualified assignment under section 130 of the Internal Revenue
14 Code.

15 (d) If the provisions of this subdivision are invalid or
16 ineffective with respect to any person or claim for any reason,
17 the amount payable by the association with respect to the related
18 covered obligations shall be reduced by the amount realized by
19 any other person with respect to the person or claim that is
20 attributable to the policies or portion of such amount covered by
21 the association.

22 (e) If the association has provided benefits with respect
23 to a covered obligation and a person recovers amounts as to which
24 the association has rights as described in subdivision (11) of this
25 section, the person shall pay to the association the portion of

1 the recovery attributable to the policies or any portion of such
2 recovery covered by the association;

3 (12) The association may:

4 (a) Enter into such contracts as are necessary or proper
5 to carry out the provisions and purposes of the act;

6 (b) Sue or be sued, including taking any legal actions
7 necessary or proper for recovery of any unpaid assessments under
8 section 44-2708;

9 (c) Borrow money to effect the purposes of the act. Any
10 notes or other evidence of indebtedness of the association not in
11 default shall be legal investments for domestic insurers and may be
12 carried as admitted assets;

13 (d) Employ or retain such persons as are necessary to
14 handle the financial transactions of the association and to perform
15 such other functions as become necessary or proper under the act;

16 (e) Negotiate and contract with any liquidator,
17 rehabilitator, conservator, or ancillary receiver to carry out the
18 powers and duties of the association;

19 (f) Take such legal action as may be necessary to avoid
20 payment of improper claims;

21 (g) Exercise, for the purposes of the act and to the
22 extent approved by the director, the powers of a domestic life or
23 health insurer, but in no case may the association issue insurance
24 policies or annuity contracts other than those issued to perform
25 the contractual obligations of the impaired or insolvent insurer;

1 (h) Organize itself as a corporation or in other legal
2 form permitted by the laws of the state;

3 (i) Request information from a person seeking coverage
4 from the association in order to aid the association in determining
5 its obligations under the act with respect to the person, and the
6 person shall promptly comply with the request;

7 (j) Take other necessary or appropriate action to
8 discharge its duties and obligations under the act or to exercise
9 its powers under the act; and

10 (k) Join an organization of one or more other state
11 associations of similar purposes to further the purposes and
12 administer the powers and duties of the association;

13 (13)(a) At any time within one year after the coverage
14 date, the association may elect to succeed to the rights and
15 obligations of the member insurer that accrue on or after the
16 coverage date and that relate to contracts covered, in whole
17 or in part, by the association under any one or more indemnity
18 reinsurance agreements entered into by the member insurer as
19 a ceding insurer and selected by the association, except that
20 the association may not exercise an election with respect to a
21 reinsurance agreement if the receiver, rehabilitator, or liquidator
22 of the member insurer has previously and expressly disaffirmed the
23 reinsurance agreement. For purposes of this section, coverage date
24 means the date on which the association becomes responsible for the
25 obligations of a member insurer. The election shall be effected

1 by a notice to the receiver, rehabilitator, or liquidator and to
2 the affected reinsurers. If the association makes an election,
3 subdivisions (13)(a)(i) through (iv) of this section apply to the
4 agreements selected by the association:

5 (i) The association shall be responsible for all unpaid
6 premiums due under the agreements for periods both before and after
7 the coverage date and shall be responsible for the performance of
8 all other obligations to be performed after the coverage date in
9 each case that relates to contracts covered, either in whole or
10 in part, by the association. The association may charge contracts
11 covered in part by the association, through reasonable allocation
12 methods, the costs for reinsurance in excess of the obligations of
13 the association;

14 (ii) The association shall be entitled to any amounts
15 payable by the reinsurer under the agreements with respect to
16 losses or events that occur in periods after the coverage date and
17 that relate to contracts covered by the association, in whole or in
18 part, except that on receiving such amounts, the association shall
19 pay to the beneficiary under the policy or contract on account of
20 which the amounts were paid a portion of the amount equal to the
21 excess of: (A) The amount received by the association, over (B)
22 the benefits paid by the association on account of the policy or
23 contract less the retention of the impaired or insolvent member
24 insurer applicable to the loss or event;

25 (iii) Within thirty days after the association's

1 election, the association and each indemnity reinsurer shall
2 calculate the net balance due to or from the association under each
3 reinsurance agreement as of the date of the association's election,
4 giving full credit to all items paid by either the member insurer,
5 or its receiver, rehabilitator, or liquidator, or the indemnity
6 reinsurer during the period between the coverage date and the
7 date of the association's election. The association or indemnity
8 reinsurer shall pay the net balance due the other within five
9 days after the completion of such calculation. If the receiver,
10 rehabilitator, or liquidator has received any amounts due the
11 association pursuant to subdivision (13)(a)(ii) of this section,
12 the receiver, rehabilitator, or liquidator shall, as promptly as
13 practicable, pay such amounts to the association; and

14 (iv) If the association, within sixty days after the
15 election, pays the premiums due for periods both before and
16 after the coverage date that relate to contracts covered by the
17 association in whole or in part, the reinsurer shall not be
18 entitled to terminate the reinsurance agreements to the extent
19 that the agreements relate to contracts covered by the association
20 either wholly or partially and may not set off any unpaid premium
21 due for periods prior to the coverage date against amounts due the
22 association;

23 (b) If the association transfers its obligations to
24 another insurer and if the association and the other insurer agree,
25 such insurer shall succeed to the rights and obligations of the

1 association under subdivision (13)(a) of this section effective
2 as of the date agreed upon by the association and such insurer
3 and regardless of whether the association has made the election
4 referred to in subdivision (13)(a) of this section except that:

5 (i) The indemnity reinsurance agreements shall
6 automatically terminate for new reinsurance unless the indemnity
7 reinsurer and the other insurer agree to the contrary;

8 (ii) The obligations described in the exception set forth
9 in subdivision (13)(a)(ii) of this section shall not apply on and
10 after the date the indemnity reinsurance agreement is transferred
11 to the third party insurer; and

12 (iii) Subdivision (13)(b) of this section shall not apply
13 if the association has previously stated in writing that it will
14 not exercise the election referred to in subdivision (13)(a) of
15 this section;

16 (c) The provisions of subdivision (13) of this section
17 shall supersede the provisions of any law of this state or of
18 any affected reinsurance agreement that provides for or requires
19 any payment of reinsurance proceeds on account of losses or events
20 that occur in periods after the coverage date to the receiver,
21 liquidator, or rehabilitator of the insolvent member insurer. The
22 receiver, rehabilitator, or liquidator shall remain entitled to any
23 amounts payable by the reinsurer under the reinsurance agreement
24 with respect to losses or events that occur in periods prior to the
25 coverage date, subject to applicable setoff provisions; and

1 (d) Except as otherwise expressly set forth in
2 subdivision (13) of this section, nothing in such subdivision
3 shall alter or modify the terms and conditions of the indemnity
4 reinsurance agreements of the insolvent member insurer. Nothing in
5 the subdivision shall abrogate or limit any rights of any reinsurer
6 to claim that it is entitled to rescind a reinsurance agreement.
7 Nothing in such subdivision shall give a policyowner or beneficiary
8 an independent cause of action against an indemnity reinsurer that
9 is not otherwise set forth in the indemnity reinsurance agreement;

10 (14) The board of directors of the association shall
11 have discretion and may exercise reasonable business judgment to
12 determine the means by which the association is to provide the
13 benefits of the act in an economical and efficient manner;

14 (15) If the association has arranged or offered to
15 provide the benefits of the act to a covered person under a plan
16 or arrangement that fulfills the association's obligations under
17 the act, such person shall not be entitled to benefits from the
18 association in addition to or other than those provided under the
19 plan or arrangement; and

20 (16) Venue in an action against the association arising
21 under the act shall be in the district court ~~of Lancaster County.~~
22 where the action is taken. The association shall not be required to
23 give an appeal bond in an appeal that relates to a cause of action
24 arising under the act.

25 Sec. 37. Section 44-32,166, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-32,166 The director may issue an order directing a
3 health maintenance organization or a representative of a health
4 maintenance organization to cease and desist from engaging in
5 any action or practice in violation of the Health Maintenance
6 Organization Act. Within ten days after service of the cease
7 and desist order, the respondent may request a hearing on the
8 question of whether actions or practices in violation of the act
9 have occurred. Such hearings shall be conducted as provided by
10 the Administrative Procedure Act. The respondent may appeal the
11 decision of the director, and the appeal shall be in accordance
12 with the Administrative Procedure Act. If the director elects not
13 to issue a cease and desist order or in the event of noncompliance
14 with a cease and desist order, the director may institute a
15 proceeding to obtain injunctive or other appropriate relief in the
16 district court ~~of Lancaster County.~~

17 Sec. 38. Section 44-4804, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-4804 (1) No delinquency proceeding shall be commenced
20 under the Nebraska Insurers Supervision, Rehabilitation, and
21 Liquidation Act by anyone other than the director, and no court
22 shall have jurisdiction to entertain, hear, or determine any
23 proceeding commenced by any other person.

24 (2) No court of this state shall have jurisdiction
25 to entertain, hear, or determine any complaint praying for

1 the dissolution, liquidation, rehabilitation, sequestration,
2 conservation, or receivership of any insurer or praying for an
3 injunction or restraining order or other relief preliminary to,
4 incidental to, or relating to such proceedings other than in
5 accordance with the act.

6 (3) In addition to other grounds for jurisdiction
7 provided by the law of this state, a court of this state having
8 jurisdiction of the subject matter has jurisdiction over a person
9 served pursuant to sections 25-505.01 to 25-530.08 or other
10 applicable provisions of law in an action brought by the receiver
11 of a domestic insurer or an alien insurer domiciled in this state:

12 (a) If the person served is an agent, broker, or other
13 person who has at any time written policies of insurance for or
14 has acted in any manner whatsoever on behalf of an insurer against
15 which a delinquency proceeding has been instituted, in any action
16 resulting from or incident to such a relationship with the insurer;

17 (b) If the person served is a reinsurer who has at any
18 time entered into a contract of reinsurance with an insurer against
19 which a delinquency proceeding has been instituted or is an agent
20 or broker of or for the reinsurer, in any action on or incident to
21 the reinsurance contract;

22 (c) If the person served is or has been an officer,
23 manager, trustee, organizer, promoter, or person in a position of
24 comparable authority or influence in an insurer against which a
25 rehabilitation or liquidation order is in effect when the action is

1 commenced, in any action resulting from such a relationship with
2 the insurer;

3 (d) If the person served is or was at the time of
4 the institution of the delinquency proceeding against the insurer
5 holding assets in which the receiver claims an interest on behalf
6 of the insurer, in any action concerning the assets; or

7 (e) If the person served is obligated to the insurer in
8 any way whatsoever, in any action on or incident to the obligation.

9 (4) If the court on motion of any party finds that any
10 action should as a matter of substantial justice be tried in a
11 forum outside this state, the court may enter an appropriate order
12 to stay further proceedings on the action in this state.

13 (5) All actions authorized by the act shall be brought in
14 the district court, ~~of Lancaster County.~~

15 Sec. 39. Section 44-4809, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-4809 (1) Whenever the director has reasonable cause
18 to believe and determines, after a hearing held under subsection
19 (5) of this section, that any domestic insurer has committed or
20 engaged in or is about to commit or engage in any act, practice, or
21 transaction that would subject it to delinquency proceedings under
22 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation
23 Act, he or she may make and serve upon the insurer and any
24 other persons involved such orders as are reasonably necessary to
25 correct, eliminate, or remedy such conduct, condition, or ground.

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

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

15 (i) Has refused to permit examination of its books,
16 papers, accounts, records, or affairs by the director or his or her
17 deputies, employees, or examiners;

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

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

24 (iv) Has neglected or refused to observe an order of
25 the director to make good, within the time prescribed by law, any

1 prohibited deficiency in its capital, capital stock, or surplus;

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

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

9 (A) Totally reinsured its entire outstanding business; or

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

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

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

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

- 1 (a) Dispose of, convey, or encumber any of its assets or
2 its business in force;
- 3 (b) Withdraw any funds from any of its bank accounts;
- 4 (c) Lend any of its funds;
- 5 (d) Invest any of its funds;
- 6 (e) Transfer any of its property;
- 7 (f) Incur any debt, obligation, or liability;
- 8 (g) Merge or consolidate with another company;
- 9 (h) Enter into any new reinsurance contract or treaty;
- 10 (i) Write or renew any insurance business;
- 11 (j) Terminate, surrender, forfeit, convert, or lapse any
12 insurance policy, certificate, or contract except for nonpayment of
13 premiums due;
- 14 (k) Release, pay, or refund premium deposits, accrued
15 cash or loan values, unearned premiums, or other reserves on any
16 insurance policy, certificate, or contract;
- 17 (l) Make any material change in management; or
- 18 (m) Increase salaries and benefits of officers or
19 directors or make any preferential payment of bonuses, dividends,
20 or other payments deemed preferential.
- 21 (4) Any insurer subject to an order under this section
22 shall comply with the lawful requirements of the director and,
23 if placed under supervision, shall have sixty days from the
24 date the supervision order is served within which to comply
25 with the requirements of the director. In the event of such

1 insurer's failure to comply within such period, the director may
2 institute proceedings under section 44-4812 or 44-4817 to have a
3 rehabilitator or liquidator appointed or may extend the period of
4 supervision.

5 (5) A notice of hearing under subsection (1) or (2) of
6 this section and any order issued pursuant to either subsection
7 shall be served upon the insurer pursuant to the Administrative
8 Procedure Act. The notice of hearing shall state the time and
9 place of hearing and the conduct, condition, or ground upon
10 which the director would base his or her order. Unless mutually
11 agreed between the director and the insurer, the hearing shall
12 occur not less than ten days nor more than thirty days after
13 notice is served and shall be either in the offices of the
14 department or in some other place convenient to the parties to
15 be designated by the director. Such hearings and any notices,
16 orders, correspondence, records, or reports relating thereto shall
17 be considered public unless the director deems it to be in the
18 best interests of the insurer, its insureds or creditors, or the
19 public that such hearings shall be held privately and such notices,
20 orders, correspondence, records, or reports shall be considered
21 confidential.

22 (6) (a) Any insurer subject to an order under subsection
23 (2) of this section may request a hearing to review the order, but
24 the request for a hearing shall not stay the effect of the order.

25 (b) If the director issues an order under subsection (2)

1 of this section, the insurer may, at any time, waive a director's
2 hearing and apply for immediate judicial relief by means of any
3 remedy afforded by law without first exhausting administrative
4 remedies. Subsequent to a hearing, any party to the proceedings
5 whose interests are substantially affected shall be entitled to
6 judicial review of any order issued by the director.

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

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

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

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

24 (10) In the event that any person subject to the
25 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act,

1 including those persons described in subsection (1) of section
2 44-4806, knowingly violates any valid order of the director issued
3 under this section and, as a result of such violation, the net
4 worth of the insurer is reduced or the insurer suffers loss
5 it would not otherwise have suffered, such person shall become
6 personally liable to the insurer for the amount of any such
7 reduction or loss. The director or supervisor may bring an action
8 on behalf of the insurer in the district court ~~of Lancaster County~~
9 to recover the amount of the reduction or loss together with any
10 costs.

11 Sec. 40. Section 44-4810, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-4810 (1) The director may file in the district court
14 ~~of Lancaster County~~ a petition alleging, with respect to a domestic
15 insurer:

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

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

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

24 (2) Upon a filing under subsection (1) of this section,
25 the court may issue, forthwith, ex parte, and without a hearing,

1 the requested order which shall direct the director to take
2 possession and control of all or a part of the property, books,
3 accounts, documents, and other records of an insurer and of the
4 premises occupied by it for transaction of its business and until
5 further order of the court enjoin the insurer and its officers,
6 managers, agents, and employees from disposition of its property
7 and from the transaction of its business except with the written
8 consent of the director.

9 (3) The court shall specify in the order what its
10 duration shall be, which shall be such time as the court deems
11 necessary for the director to ascertain the condition of the
12 insurer. On motion of either party or on its own motion, the court
13 may from time to time hold such hearings as it deems desirable
14 after such notice as it deems appropriate and may extend, shorten,
15 or modify the terms of the seizure order. The court shall vacate
16 the seizure order if the director fails to commence a formal
17 delinquency proceeding under the act after having had a reasonable
18 opportunity to do so. An order of the court pursuant to a formal
19 delinquency proceeding under the act shall ipso facto vacate the
20 seizure order.

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

23 (5) An insurer subject to an ex parte order under this
24 section may petition the court at any time after the issuance of
25 such order for a hearing and review of the order. The court shall

1 hold such a hearing and review not more than fifteen days after the
2 request. A hearing under this subsection may be held privately in
3 chambers, and it shall be so held if the insurer proceeded against
4 so requests.

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

11 Sec. 41. Section 44-4812, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-4812 The director may apply by petition to the
14 district court ~~of Lancaster County~~ for an order authorizing him
15 or her to rehabilitate a domestic insurer or an alien insurer
16 domiciled in this state on any one or more of the following
17 grounds:

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

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

1 threatening the solvency of the insurer;

2 (3) The insurer has failed to remove any person who in
3 fact has executive authority in the insurer, whether an officer,
4 manager, general agent, employee, or other person, if the person
5 has been found after notice and hearing by the director to
6 be dishonest or untrustworthy in a way affecting the insurer's
7 business;

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

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

19 (6) After demand by the director under the Insurers
20 Examination Act or under the Nebraska Insurers Supervision,
21 Rehabilitation, and Liquidation Act, the insurer has failed to
22 promptly make available for examination any of its own property,
23 books, accounts, documents, or other records, those of any
24 subsidiary or related company within the control of the insurer, or
25 those of any person having executive authority in the insurer so

1 far as they pertain to the insurer;

2 (7) Without first obtaining the written consent of the
3 director, the insurer has transferred or attempted to transfer, in
4 a manner contrary to the Insurance Holding Company System Act or
5 sections 44-224.01 to 44-224.10, substantially its entire property
6 or business or has entered into any transaction the effect of which
7 is to merge, consolidate, or reinsure substantially its entire
8 property or business in or with the property or business of any
9 other person;

10 (8) The insurer or its property has been or is the
11 subject of an application for the appointment of a receiver,
12 trustee, custodian, conservator, or sequestrator or similar
13 fiduciary of the insurer or its property otherwise than as
14 authorized under the insurance laws of this state, such appointment
15 has been made or is imminent, and such appointment might oust the
16 courts of this state of jurisdiction or might prejudice orderly
17 delinquency proceedings under the Nebraska Insurers Supervision,
18 Rehabilitation, and Liquidation Act;

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

23 (10) The insurer has failed to pay within sixty days
24 after due date any obligation to any state or any subdivision
25 thereof or any judgment entered in any state if the court

1 in which such judgment was entered had jurisdiction over such
2 subject matter, except that such nonpayment shall not be a
3 ground until sixty days after any good faith effort by the
4 insurer to contest the obligation has been terminated, whether
5 it is before the director or in the courts, or the insurer has
6 systematically attempted to compromise or renegotiate previously
7 agreed settlements with its creditors on the ground that it is
8 financially unable to pay its obligations in full;

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

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

18 Sec. 42. Section 44-4813, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-4813 (1) An order to rehabilitate the business of
21 a domestic insurer or an alien insurer domiciled in this state
22 shall appoint the director and his or her successors in office the
23 rehabilitator and shall direct the rehabilitator forthwith to take
24 possession of the assets of the insurer and to administer them
25 under the general supervision of the court. The filing or recording

1 of the order with the clerk of the district court of ~~Lancaster~~
2 ~~County~~ or register of deeds of the county in which the principal
3 business of the company is conducted or in which its principal
4 office or place of business is located shall impart the same notice
5 as a deed, bill of sale, or other evidence of title duly filed or
6 recorded with that register of deeds would have imparted. The order
7 to rehabilitate the insurer shall by operation of law vest title to
8 all assets of the insurer in the rehabilitator.

9 (2) Any order issued under this section shall require
10 accounting to the court by the rehabilitator. Accountings shall
11 be at such intervals as the court specifies in the order but no
12 less frequently than semiannually. Each accounting shall include a
13 report concerning the rehabilitator's opinion as to the likelihood
14 that a plan under subsection (4) of section 44-4814 will be
15 prepared by the rehabilitator and the timetable for doing so.

16 (3) Entry of an order of rehabilitation shall not
17 constitute an anticipatory breach of any contracts of the insurer
18 and shall not be grounds for retroactive revocation or retroactive
19 cancellation of any contracts of the insurer unless such revocation
20 or cancellation is done by the rehabilitator pursuant to section
21 44-4814.

22 Sec. 43. Section 44-4816, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-4816 (1) Whenever the director believes further
25 attempts to rehabilitate an insurer would substantially increase

1 the risk of loss to insureds, creditors, or the public or would
2 be futile, the director may petition the district court ~~of~~
3 ~~Lancaster County~~ for an order of liquidation. A petition under this
4 subsection shall have the same effect as a petition under section
5 44-4817. The court shall permit the directors of the insurer to
6 take such actions as are reasonably necessary to defend against the
7 petition and may order payment from the estate of the insurer of
8 such costs and other expenses of defense as justice may require.

9 (2) The protection of the interests of insureds,
10 claimants, and the public requires the timely performance of all
11 insurance policy obligations. If the payment of policy obligations
12 is suspended in substantial part for a period of six months
13 at any time after the appointment of the rehabilitator and the
14 rehabilitator has not filed an application for approval of a plan
15 under subsection (4) of section 44-4814, the rehabilitator shall
16 petition the court for an order of liquidation on grounds of
17 insolvency.

18 (3) The rehabilitator may at any time petition the
19 district court ~~of Lancaster County~~ for an order terminating
20 rehabilitation of an insurer. The court shall also permit the
21 directors of the insurer to petition the court for an order
22 terminating rehabilitation of the insurer and may order payment
23 from the estate of the insurer of such costs and other expenses
24 of such petition as justice may require. If upon the petition
25 of the rehabilitator or the directors of the insurer or upon

1 its own motion at any time the court finds that rehabilitation
2 has been accomplished and that grounds for rehabilitation under
3 section 44-4812 no longer exist, it shall order that the insurer
4 be restored to possession of its property and the control of the
5 business.

6 Sec. 44. Section 44-4817, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-4817 The director may petition the district court of
9 ~~Lancaster County~~ for an order directing him or her to liquidate a
10 domestic insurer or an alien insurer domiciled in this state on the
11 basis:

12 (1) Of any ground for an order of rehabilitation as
13 specified in section 44-4812 whether or not there has been a prior
14 order directing the rehabilitation of the insurer;

15 (2) That the insurer is insolvent; or

16 (3) That the insurer is in such condition that the
17 further transaction of business would be hazardous, financially or
18 otherwise, to its insureds or creditors or the public.

19 Sec. 45. Section 44-4828, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-4828 (1) (a) A preference shall mean a transfer of
22 any of the property of an insurer to or for the benefit of a
23 creditor, for or on account of an antecedent debt, made or suffered
24 by the insurer within one year before the filing of a successful
25 petition for liquidation under the Nebraska Insurers Supervision,

1 Rehabilitation, and Liquidation Act the effect of which transfer
2 may be to enable the creditor to obtain a greater percentage of
3 such debt than another creditor of the same class would receive.
4 If a liquidation order is entered while the insurer is already
5 subject to a rehabilitation order, such transfers shall be deemed
6 preferences if made or suffered within one year before the filing
7 of the successful petition for rehabilitation or within two years
8 before the filing of the successful petition for liquidation,
9 whichever time is shorter.

10 (b) Any preference may be avoided by the liquidator if:

11 (i) The insurer was insolvent at the time of the
12 transfer;

13 (ii) The transfer was made within four months before the
14 filing of the petition;

15 (iii) The creditor receiving it or to be benefited
16 thereby or his or her agent acting with reference thereto had, at
17 the time when the transfer was made, reasonable cause to believe
18 that the insurer was insolvent or was about to become insolvent; or

19 (iv) The creditor receiving it was: An officer; any
20 employee, attorney, or other person who was in fact in a position
21 of comparable influence in the insurer to an officer whether
22 or not he or she held such position; any shareholder holding
23 directly or indirectly more than five percent of any class of any
24 equity security issued by the insurer; or any other person, firm,
25 corporation, association, or aggregation of persons with whom the

1 insurer did not deal at arm's length.

2 (c) When the preference is voidable, the liquidator may
3 recover the property or, if it has been converted, its value from
4 any person who has received or converted the property, except when
5 a bona fide purchaser or lienor has given less than fair equivalent
6 value, he or she shall have a lien upon the property to the
7 extent of the consideration actually given by him or her. When a
8 preference by way of lien or security title is voidable, the court
9 may on due notice order the lien or title to be preserved for the
10 benefit of the estate, in which event the lien or title shall pass
11 to the liquidator.

12 (2) (a) A transfer of property other than real property
13 shall be deemed to be made or suffered when it becomes so far
14 perfected that no subsequent lien obtainable by legal or equitable
15 proceedings on a simple contract could become superior to the
16 rights of the transferee.

17 (b) A transfer of real property shall be deemed to
18 be made or suffered when it becomes so far perfected that no
19 subsequent bona fide purchaser from the insurer could obtain rights
20 superior to the rights of the transferee.

21 (c) A transfer which creates an equitable lien shall not
22 be deemed to be perfected if there are available means by which a
23 legal lien could be created.

24 (d) A transfer not perfected prior to the filing of a
25 petition for liquidation shall be deemed to be made immediately

1 before the filing of the successful petition.

2 (e) The provisions of this subsection shall apply whether
3 or not there are or were creditors who might have obtained liens or
4 persons who might have become bona fide purchasers.

5 (3) (a) A lien obtainable by legal or equitable
6 proceedings upon a simple contract shall be one arising in the
7 ordinary course of such proceedings upon the entry or docketing of
8 a judgment or decree or upon attachment, garnishment, execution,
9 or like process, whether before, upon, or after judgment or decree
10 and whether before or upon levy. It shall not include liens which
11 under applicable law are given a special priority over other liens
12 which are prior in time.

13 (b) A lien obtainable by legal or equitable proceedings
14 could become superior to the rights of a transferee or a purchaser
15 could obtain rights superior to the rights of a transferee within
16 the meaning of subsection (2) of this section if such consequences
17 would follow only from the lien or purchase itself or from the
18 lien or purchase followed by any step wholly within the control
19 of the respective lienholder or purchaser with or without the
20 aid of ministerial action by public officials. Such a lien could
21 not, however, become superior and such a purchase could not
22 create superior rights for the purpose of subsection (2) of this
23 section through any acts subsequent to the obtaining of such a
24 lien or subsequent to such a purchase which require the agreement
25 or concurrence of any third party or which require any further

1 judicial action or ruling.

2 (4) A transfer of property for or on account of a new and
3 contemporaneous consideration which is deemed under subsection (2)
4 of this section to be made or suffered after the transfer because
5 of delay in perfecting shall not thereby become a transfer for
6 or on account of an antecedent debt if any acts required by the
7 applicable law to be performed in order to perfect the transfer
8 as against liens or bona fide purchasers' rights are performed
9 within twenty-one days or any period expressly allowed by the law,
10 whichever is less. A transfer to secure a future loan, if such a
11 loan is actually made, or a transfer which becomes security for a
12 future loan shall have the same effect as a transfer for or on
13 account of a new and contemporaneous consideration.

14 (5) If any lien deemed voidable under subdivision (1)(b)
15 of this section has been dissolved by the furnishing of a bond or
16 other obligation, the surety on which has been indemnified directly
17 or indirectly by the transfer of or the creation of a lien upon any
18 property of an insurer before the filing of a petition under the
19 act which results in a liquidation order, the indemnifying transfer
20 or lien shall also be deemed voidable.

21 (6) The property affected by any lien deemed voidable
22 under subsections (1) and (5) of this section shall be discharged
23 from such lien, and that property and any of the indemnifying
24 property transferred to or for the benefit of a surety shall pass
25 to the liquidator, except that the court may on due notice order

1 any such lien to be preserved for the benefit of the estate and the
2 court may direct that such conveyance be executed as may be proper
3 or adequate to evidence the title of the liquidator.

4 (7) The district court of ~~Lancaster County~~ shall have
5 summary jurisdiction of any proceeding by the liquidator to hear
6 and determine the rights of any parties under this section.
7 Reasonable notice of any hearing in the proceeding shall be given
8 to all parties in interest, including the obligee of a releasing
9 bond or other like obligation. When an order is entered for the
10 recovery of indemnifying property in kind or for the avoidance of
11 an indemnifying lien, the court, upon application of any party in
12 interest, shall in the same proceeding ascertain the value of the
13 property or lien, and if the value is less than the amount for
14 which the property is indemnity or than the amount of the lien,
15 the transferee or lienholder may elect to retain the property or
16 lien upon payment of its value, as ascertained by the court, to the
17 liquidator within such reasonable times as the court shall fix.

18 (8) The liability of the surety under a releasing bond
19 or other like obligation shall be discharged to the extent of the
20 value of the indemnifying property recovered or the indemnifying
21 lien nullified and avoided by the liquidator or, when the property
22 is retained under subsection (7) of this section, to the extent of
23 the amount paid to the liquidator.

24 (9) If a creditor has been preferred and afterward in
25 good faith gives the insurer further credit without security of any

1 kind for property which becomes a part of the insurer's estate,
2 the amount of the new credit remaining unpaid at the time of
3 the petition may be set off against the preference which would
4 otherwise be recoverable from him or her.

5 (10) If an insurer, directly or indirectly, within four
6 months before the filing of a successful petition for liquidation
7 under the act or at any time in contemplation of a proceeding
8 to liquidate, pays money or transfers property to an attorney
9 for services rendered or to be rendered, the transactions may be
10 examined by the court on its own motion or shall be examined by
11 the court on petition of the liquidator and shall be held valid
12 only to the extent of a reasonable amount to be determined by
13 the court, and the excess may be recovered by the liquidator for
14 the benefit of the estate, except that if the attorney is in
15 a position of influence in the insurer or an affiliate thereof,
16 payment of any money or the transfer of any property to the
17 attorney for services rendered or to be rendered shall be governed
18 by subdivision (1)(b)(iv) of this section.

19 (11)(a) Every officer, manager, employee, shareholder,
20 member, subscriber, attorney, or any other person acting on behalf
21 of the insurer who knowingly participates in giving any preference
22 when he or she has reasonable cause to believe the insurer is
23 or is about to become insolvent at the time of the preference
24 shall be personally liable to the liquidator for the amount of
25 the preference. It shall be permissible to infer that there is a

1 reasonable cause to so believe if the transfer was made within four
2 months before the date of filing of the successful petition for
3 liquidation.

4 (b) Every person receiving any property from the insurer
5 or the benefit thereof as a preference voidable under subsection
6 (1) of this section shall be personally liable therefor and shall
7 be bound to account to the liquidator.

8 (c) Nothing in this subsection shall prejudice any other
9 claim by the liquidator against any person.

10 Sec. 46. Section 44-4831, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-4831 (1) As soon as practicable, but not more than
13 two years from the date of an order of liquidation under section
14 44-4818 of an insurer issuing assessable policies, the liquidator
15 shall make a report to the court setting forth:

16 (a) The reasonable value of the assets of the insurer;

17 (b) The insurer's probable total liabilities;

18 (c) The probable aggregate amount of the assessment
19 necessary to pay all claims of creditors and expenses in full,
20 including expenses of administration and costs of collecting the
21 assessment; and

22 (d) A recommendation as to whether or not an assessment
23 should be made and in what amount.

24 (2)(a) Upon the basis of the report provided in
25 subsection (1) of this section, including any supplements and

1 amendments thereto, the district court of ~~Lancaster County~~ may levy
2 one or more assessments against all members of the insurer who are
3 subject to assessment.

4 (b) Subject to any applicable legal limits on
5 assessability, the aggregate assessment shall be for the amount
6 that the sum of the probable liabilities, the expenses of
7 administration, and the estimated cost of collection of the
8 assessment, exceeds the value of existing assets, with due regard
9 being given to assessments that cannot be collected economically.

10 (3) After levy of assessment under subsection (2) of this
11 section, the liquidator shall issue an order directing each member
12 who has not paid the assessment pursuant to the order to show cause
13 why the liquidator should not pursue a judgment therefor.

14 (4) The liquidator shall give notice of the order to show
15 cause by publication and by first-class mail to each member liable
16 thereunder mailed to his or her last-known address as it appears on
17 the insurer's records at least twenty days before the return day of
18 the order to show cause.

19 (5) (a) If a member does not appear and serve duly
20 verified objections upon the liquidator on or before the return day
21 of the order to show cause under subsection (3) of this section,
22 the court shall make an order adjudging the member liable for the
23 amount of the assessment against him or her pursuant to subsection
24 (3) of this section, together with costs, and the liquidator shall
25 have a judgment against the member therefor.

1 (b) If on or before such return day the member appears
2 and serves duly verified objections upon the liquidator, the
3 director may hear and determine the matter or may appoint a referee
4 to hear it and make such order as the facts warrant. In the event
5 that the director determines that such objections do not warrant
6 relief from assessment, the member may request the court to review
7 the matter and vacate the order to show cause.

8 (6) The liquidator may enforce any order or collect any
9 judgment under subsection (5) of this section by any lawful means.

10 Sec. 47. Section 44-4833, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-4833 (1) (a) An agent, broker, premium finance company,
13 or any other person, other than the insured, responsible for
14 the payment of a premium shall be obligated to pay any unpaid
15 earned premium due the insurer at the time of the declaration of
16 insolvency as shown on the records of the insurer. The liquidator
17 shall also have the right to recover from such person any part of
18 an unearned commission of such person. An agent, broker, premium
19 finance company, or any other person, other than the insured,
20 responsible for the payment of a premium shall not be obligated
21 to pay the unpaid unearned premium due the insurer at the time
22 of the declaration of insolvency as shown on the records of the
23 insurer, and any such unearned premium in the possession of such
24 agent, broker, premium finance company, or other person at such
25 time shall be returned promptly by such agent, broker, premium

1 finance company, or other person to the insured or other person
2 from whom it was received. Credits or setoffs or both shall not
3 be allowed to an agent, broker, or premium finance company for any
4 amounts advanced to the insurer by the agent, broker, or premium
5 finance company on behalf of, but in the absence of a payment by,
6 the insured.

7 (b) An insured shall be obligated to pay any unpaid
8 earned premium due the insurer at the time of the declaration of
9 insolvency as shown on the records of the insurer.

10 (2) Upon satisfactory evidence of a violation of this
11 section, the director may pursue either one or both of the
12 following courses of action:

13 (a) Suspend, revoke, or refuse to renew the licenses of
14 such offending party or parties; or

15 (b) Impose a civil penalty of not more than one thousand
16 dollars for each and every act in violation of this section by the
17 party or parties.

18 (3) Before the director takes any action as set forth
19 in subsection (2) of this section, he or she shall give written
20 notice to the person, company, association, or exchange accused
21 of violating the law, stating specifically the nature of the
22 alleged violation and fixing a time and place, at least ten days
23 thereafter, when a hearing on the matter shall be held. After such
24 hearing or upon failure of the accused to appear at such hearing,
25 the director, if he or she finds such violation, shall impose the

1 penalties under subsection (2) of this section as he or she deems
2 advisable.

3 (4) When the director takes action in any or all of the
4 ways set out in subsection (2) of this section, the party aggrieved
5 may appeal from the action to the district court ~~of Lancaster~~
6 ~~County.~~

7 Sec. 48. Section 44-4847, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-4847 After the liquidation proceeding has been
10 terminated and the liquidator discharged, the director or other
11 interested party may at any time petition the district court
12 ~~of Lancaster County~~ to reopen the proceedings for good cause,
13 including the discovery of additional assets. If the court is
14 satisfied that there is justification for reopening, it shall so
15 order.

16 Sec. 49. Section 44-4849, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-4849 The district court ~~of Lancaster County~~ may cause
19 audits to be made of the books of the director relating to any
20 receivership established under the Nebraska Insurers Supervision,
21 Rehabilitation, and Liquidation Act, and a report of each audit
22 shall be filed with the director and with the court. The books,
23 records, and other documents of the receivership shall be made
24 available to the auditor at any time without notice. The expense
25 of each audit shall be considered a cost of administration of the

1 receivership.

2 Sec. 50. Section 44-4850, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-4850 (1) If a domiciliary liquidator has not been
5 appointed, the director may apply to the district court of
6 ~~Lancaster County~~ by verified petition for an order directing
7 him or her to act as conservator to conserve the property of an
8 alien insurer not domiciled in this state or a foreign insurer on
9 any one or more of the following grounds:

10 (a) Any of the grounds in section 44-4812;

11 (b) That any of its property has been sequestered by
12 official action in its domiciliary state or in any other state;

13 (c) That enough of its property has been sequestered in
14 a foreign country to give reasonable cause to believe that the
15 insurer is or may become insolvent; or

16 (d)(i) That its certificate of authority to do business
17 in this state has been revoked or that none was ever issued; and

18 (ii) That there are residents of this state with
19 outstanding claims against or outstanding policies issued by such
20 insurer.

21 (2) When an order is sought under subsection (1) of
22 this section, the court shall cause the insurer to be given such
23 notice and time to respond thereto as is reasonable under the
24 circumstances.

25 (3) The court may issue the order in whatever terms it

1 deems appropriate. The filing or recording of the order with the
2 clerk of the district court or the register of deeds of the county
3 in which the principal business of the company is located shall
4 impart the same notice as a deed, bill of sale, or other evidence
5 of title duly filed or recorded with that register of deeds would
6 have imparted.

7 (4) The conservator may at any time petition for and
8 the court may grant an order under section 44-4851 to liquidate
9 assets of a foreign or alien insurer under conservation or, if
10 appropriate, for an order under section 44-4853 to be appointed
11 ancillary receiver.

12 (5) The conservator may at any time petition the court
13 for an order terminating conservation of an insurer. If the court
14 finds that the conservation is no longer necessary, it shall order
15 that the insurer be restored to possession of its property and the
16 control of its business. The court may also make such finding and
17 issue such order at any time upon motion of any interested party,
18 but if such motion is denied all costs shall be assessed against
19 such party.

20 Sec. 51. Section 44-4851, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-4851 (1) If no domiciliary receiver has been
23 appointed, the director may apply to the district court of
24 ~~Lancaster County~~ by verified petition for an order directing him
25 or her to liquidate the assets found in this state of a foreign

1 insurer or an alien insurer not domiciled in this state on any of
2 the following grounds:

3 (a) Any of the grounds in section 44-4812 or 44-4817; or

4 (b) Any of the grounds specified in subdivisions (1)(b)
5 through (d) of section 44-4850.

6 (2) When an order is sought under subsection (1) of
7 this section, the court shall cause the insurer to be given such
8 notice and time to respond thereto as is reasonable under the
9 circumstances.

10 (3) If it appears to the court that the best interests
11 of insureds, creditors, and the public require, the court may issue
12 an order to liquidate in whatever terms it deems appropriate. The
13 filing or recording of the order with the clerk of the district
14 court or the register of deeds of the county in which the principal
15 business of the company is located or the county in which its
16 principal office or place of business is located shall impart the
17 same notice as a deed, bill of sale, or other evidence of title
18 duly filed or recorded with that register of deeds would have
19 imparted.

20 (4) If a domiciliary liquidator is appointed in a
21 reciprocal state while a liquidation is proceeding under this
22 section, the liquidator under this section shall thereafter act
23 as ancillary receiver under section 44-4853. If a domiciliary
24 liquidator is appointed in a nonreciprocal state while a
25 liquidation is proceeding under this section, the liquidator under

1 this section may petition the court for permission to act as
2 ancillary receiver under section 44-4853.

3 (5) On the same grounds as are specified in subsection
4 (1) of this section, the director may petition any appropriate
5 federal district court to be appointed receiver to liquidate that
6 portion of the insurer's assets and business over which the court
7 will exercise jurisdiction or any lesser part thereof that the
8 director deems desirable for the protection of the insureds and
9 creditors in this state.

10 (6) The court may order the director, when he or she
11 has liquidated the assets of a foreign or alien insurer under
12 this section, to pay claims of residents of this state against the
13 insurer under such rules as to the liquidation of insurers under
14 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation
15 Act as are otherwise compatible with the provisions of this
16 section.

17 Sec. 52. Section 44-4852, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-4852 (1) The domiciliary liquidator of an insurer
20 domiciled in a reciprocal state shall, except as to special
21 deposits and security on secured claims under subsection (3) of
22 section 44-4853, be vested by operation of law with the title
23 to all of the assets, property, contracts, and rights of action,
24 agents' balances, and all of the books, accounts, and other records
25 of the insurer located in this state. The date of vesting shall be

1 the date of the filing of the petition if that date is specified by
2 the domiciliary law for the vesting of property in the domiciliary
3 state. Otherwise, the date of vesting shall be the date of entry
4 of the order directing possession to be taken. The domiciliary
5 liquidator shall have the immediate right to recover balances due
6 from agents and to obtain possession of the books, accounts, and
7 other records of the insurer located in this state. He or she also
8 shall have the right to recover all other assets of the insurer
9 located in this state subject to section 44-4853.

10 (2) If a domiciliary liquidator is appointed for an
11 insurer not domiciled in a reciprocal state, the director shall be
12 vested by operation of law with the title to all of the property,
13 contracts, and rights of action and all of the books, accounts,
14 and other records of the insurer located in this state at the
15 same time that the domiciliary liquidator is vested with title
16 in the domicile. The director may petition for a conservation
17 or liquidation order under section 44-4850 or 44-4851 or for an
18 ancillary receivership under section 44-4853 or, after approval by
19 the district court, ~~of Lancaster County,~~ may transfer title to
20 the domiciliary liquidator as the interests of justice and the
21 equitable distribution of the assets require.

22 (3) Claimants residing in this state may file claims with
23 the liquidator or ancillary receiver, if any, in this state or
24 with the domiciliary liquidator if the domiciliary law permits. The
25 claims shall be filed on or before the last date fixed for the

1 filing of claims in the domiciliary liquidation proceedings.

2 Sec. 53. Section 44-4853, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-4853 (1) If a domiciliary liquidator has been
5 appointed for an insurer not domiciled in this state, the director
6 may file a petition with the district court ~~of Lancaster County~~
7 requesting appointment as ancillary receiver in this state:

8 (a) If he or she finds that there are sufficient assets
9 of the insurer located in this state to justify the appointment of
10 an ancillary receiver; or

11 (b) If the protection of insureds or creditors in this
12 state so requires.

13 (2) The court may issue an order appointing an ancillary
14 receiver in whatever terms it deems appropriate. The filing or
15 recording of the order with the register of deeds in this state
16 imparts the same notice as a deed, bill of sale, or other evidence
17 of title duly filed or recorded with that register of deeds.

18 (3) When a domiciliary liquidator has been appointed
19 in a reciprocal state, then the ancillary receiver appointed in
20 this state may, whenever necessary, aid and assist the domiciliary
21 liquidator in recovering assets of the insurer located in this
22 state. The ancillary receiver shall, as soon as practicable,
23 liquidate from their respective securities those special deposit
24 claims and secured claims which are proved and allowed in the
25 ancillary proceedings in this state and shall pay the necessary

1 expenses of the proceedings. He or she shall promptly transfer all
2 remaining assets, books, accounts, and records to the domiciliary
3 liquidator. Subject to this section, the ancillary receiver and
4 his or her deputies shall have the same powers and be subject to
5 the same duties with respect to the administration of assets as a
6 liquidator of an insurer domiciled in this state.

7 (4) When a domiciliary liquidator has been appointed
8 in this state, ancillary receivers appointed in reciprocal states
9 shall have, as to assets and books, accounts, and other records in
10 their respective states, corresponding rights, duties, and powers
11 to those provided in subsection (3) of this section for ancillary
12 receivers appointed in this state.

13 Sec. 54. Section 44-6023, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-6023 (1) Any foreign insurer or foreign health
16 organization shall, upon the written request of the director,
17 submit to the director a risk-based capital report as of the end of
18 the calendar year just ended not later than the later of:

19 (a) The date a risk-based capital report would be
20 required to be filed by a domestic insurer or domestic health
21 organization under section 44-6015; or

22 (b) Fifteen days after the request is received by the
23 foreign insurer or foreign health organization.

24 Any foreign insurer or foreign health organization shall,
25 at the written request of the director, promptly submit to the

1 director a copy of any risk-based capital plan that is filed with
2 the insurance commissioner of any other state.

3 (2) In the event of a company action level event, a
4 regulatory action level event, or an authorized control level event
5 with respect to any foreign insurer or foreign health organization
6 as determined under the risk-based capital law applicable in the
7 state of domicile of the insurer or health organization or, if
8 no risk-based capital law is in force in that state, under the
9 Insurers and Health Organizations Risk-Based Capital Act, if the
10 insurance commissioner of the state of domicile of the foreign
11 insurer or foreign health organization fails to require the foreign
12 insurer or foreign health organization to file a risk-based capital
13 plan in the manner specified under the risk-based capital law
14 applicable in the state of domicile of the insurer or health
15 organization or, if no risk-based capital law is in force in the
16 state of domicile of the insurer or health organization, under
17 section 44-6016, the director may require the foreign insurer
18 or foreign health organization to file a risk-based capital plan
19 with the director. In such event, the failure of the foreign
20 insurer or foreign health organization to file a risk-based capital
21 plan with the director shall be grounds to order the insurer or
22 health organization to cease and desist from writing new insurance
23 business in this state.

24 (3) In the event of a mandatory control level event with
25 respect to any foreign insurer or foreign health organization,

1 if no domiciliary receiver has been appointed with respect to
2 the foreign insurer or foreign health organization under the
3 rehabilitation and liquidation law applicable in the state of
4 domicile of the foreign insurer or foreign health organization, the
5 director may make application to the district court ~~of Lancaster~~
6 ~~County~~ under the Nebraska Insurers Supervision, Rehabilitation, and
7 Liquidation Act with respect to the liquidation of property of
8 foreign insurers or foreign health organizations found in this
9 state, and the occurrence of the mandatory control level event
10 shall be considered adequate grounds for the application.

11 Sec. 55. Section 44-6111, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-6111 Any person affected by a final order issued
14 pursuant to the Insurers Demutualization Act shall have the right
15 to appeal such order to the district court ~~of Lancaster County.~~
16 ~~The appeal shall be~~ in accordance with the Administrative Procedure
17 Act.

18 Sec. 56. Section 44-6115, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-6115 (1) (a) Except as otherwise specifically provided
21 in the plan of conversion, prior to and for a period of five
22 years following the issuance of a certificate of authority to a
23 new stock insurer under the Insurers Demutualization Act, no person
24 other than the new stock insurer shall directly or indirectly offer
25 to acquire or acquire in any manner the beneficial ownership of

1 five percent or more of any class of a voting security of the new
2 stock insurer or of any institution which owns a majority or all
3 of the voting securities of the new stock insurer without the prior
4 approval by the director of an application for acquisition filed by
5 such person with the director.

6 (b) The director shall not approve an application for
7 acquisition filed pursuant to subdivision (1)(a) of this section
8 unless he or she finds that:

9 (i) The acquisition would not frustrate the plan of
10 conversion as approved by the policyholders and the director;

11 (ii) The board of directors of the new stock insurer
12 has approved the acquisition or extraordinary circumstances not
13 contemplated in the plan of conversion have arisen which would
14 warrant approval of the acquisition; and

15 (iii) The acquisition would be consistent with the
16 legislative purpose of the Insurers Demutualization Act to permit
17 conversions on terms and conditions that are fair and equitable to
18 the policyholders.

19 (c) An application for acquisition filed pursuant to
20 subsection (1) of this section shall describe in sufficient detail
21 the information to be considered under subdivision (1)(b) of this
22 section.

23 (d) If any material change occurs in the facts set forth
24 in an application for acquisition filed pursuant to subsection (1)
25 of this section, an amendment setting forth the change, together

1 with copies of all documents and other material relevant to such
2 change, shall be filed with the director.

3 (2) The director may hold a public hearing on an
4 application for acquisition filed pursuant to subsection (1) of
5 this section unless the board of directors of the new stock insurer
6 has approved the acquisition. The public hearing shall be held
7 within thirty days after the person seeking to acquire securities
8 files an application for acquisition with the director pursuant to
9 subsection (1) of this section, with at least twenty days' notice
10 of the hearing given by the director to the person filing the
11 application for acquisition. Not less than seven days' notice of
12 the hearing shall be given by the person filing the application
13 for acquisition to the new stock insurer and to such other persons
14 as may be designated by the director. At the hearing the person
15 filing the application for acquisition, the new stock insurer,
16 any person to whom notice of the hearing was sent, and any other
17 person whose interest may be affected may present evidence, examine
18 and cross-examine witnesses, and offer oral and written arguments,
19 and in connection therewith, may conduct discovery proceedings in
20 the same manner as is presently allowed in the district court.
21 All discovery proceedings shall be concluded not later than three
22 days prior to the commencement of the hearing. If any offer or
23 acquisition referred to in the application for acquisition is
24 proposed by means of a registration statement under the federal
25 Securities Act of 1933, in circumstances requiring the disclosure

1 of similar information under the federal Securities Exchange Act
2 of 1934, or under a state law requiring similar registration or
3 disclosure, the person required to file the statement may utilize
4 such documents in furnishing the information called for by the
5 application for acquisition. The person filing the application
6 shall serve the new stock insurer and any institution which owns a
7 majority or all of the voting securities of the new stock insurer
8 with a copy of the application for acquisition and any amendments
9 thereto on the day such documents are filed with the director.

10 (3) The new stock insurer and any institution which owns
11 a majority or all of the voting securities of the new stock insurer
12 shall be permitted to become a party upon their request.

13 (4) The director shall make a determination within thirty
14 days after the conclusion of the hearing or, if no hearing is held,
15 within thirty days after the date the application for acquisition
16 is filed with the director pursuant to subsection (1) of this
17 section. Approval or disapproval of an application for acquisition
18 shall be by written order. The order may be appealed ~~to the~~
19 ~~district court of Lancaster County,~~ and the appeal shall be in
20 accordance with the Administrative Procedure Act.

21 (5) The director may retain, at the expense of the person
22 filing an application for acquisition pursuant to subsection (1)
23 of this section, any attorneys, actuaries, accountants, and other
24 experts who are not employees of the Department of Insurance as
25 may be reasonably necessary to assist the director in reviewing the

1 application.

2 Sec. 57. Section 44-6115.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-6115.01 No security which is the subject of any
5 agreement or arrangement regarding acquisition, or which is
6 acquired or to be acquired, in contravention of section 44-6115 or
7 of any rule, regulation, or order of the director may be voted at
8 any shareholders' meeting or may be counted for quorum purposes,
9 and any action of shareholders requiring the affirmative vote of a
10 percentage of shares may be taken as though such securities were
11 not issued and outstanding, but no action taken at any such meeting
12 shall be invalidated by the voting of such securities unless the
13 action would materially affect control of the new stock insurer
14 or an institution which owns a majority or all of the voting
15 securities of the new stock insurer or unless the courts of this
16 state have so ordered. If a new stock insurer or the director has
17 reason to believe that any security of the new stock insurer or an
18 institution which owns a majority or all of the voting securities
19 of the new stock insurer has been or is about to be acquired in
20 contravention of the Insurers Demutualization Act or of any rule,
21 regulation, or order of the director, the new stock insurer or the
22 director may apply to the district court ~~of Lancaster County~~ for an
23 order to enjoin any offer or acquisition made in contravention of
24 section 44-6115 or any rule, regulation, or order of the director
25 to enjoin the voting of any security so acquired, to void any vote

1 of such security already cast at any shareholders' meeting, and
2 for such other equitable relief as the nature of the case and the
3 interest of the new stock insurer's policyholders, creditors, and
4 shareholders or the public may require.

5 Sec. 58. Section 44-6115.02, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-6115.02 In any case when a person has acquired or
8 is proposing to acquire any voting securities in violation of the
9 Insurers Demutualization Act or any rule, regulation, or order of
10 the director, the district court ~~of Lancaster County~~ may, on such
11 notice as the court deems appropriate, upon the application of the
12 director or the new stock insurer seize or sequester any voting
13 securities of the new stock insurer or an institution which owns a
14 majority or all of the voting securities of the new stock insurer
15 owned directly or indirectly by such person and issue such order
16 with respect thereto as may be appropriate to effectuate the act.
17 Notwithstanding any other provisions of law, for purposes of the
18 act, situs of the ownership of such securities shall be deemed to
19 be in this state.

20 Sec. 59. Section 44-6121, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-6121 Whenever it appears to the director that any
23 person or any director, officer, employee, or agent of the person
24 has committed or is about to commit a violation of the Insurers
25 Demutualization Act or of any rule, regulation, or order of the

1 ~~director, Director of Insurance,~~ the director may apply to the
2 district court ~~of Lancaster County~~ for an order enjoining such
3 person, director, officer, employee, or agent from violating or
4 continuing to violate the act or any such rule, regulation, or
5 order and for such other equitable relief as the nature of the case
6 and the interest of the insurer's policyholders, creditors, and
7 shareholders or the public may require.

8 Sec. 60. Section 44-6131, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-6131 Any person affected by a final order issued
11 pursuant to the Mutual Insurance Holding Company Act shall have
12 the right to appeal such order ~~to the district court of Lancaster~~
13 ~~County.~~ The appeal shall be in accordance with the Administrative
14 Procedure Act.

15 Sec. 61. Section 44-6141, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-6141 Whenever it appears to the director that any
18 person or any director, officer, employee, or agent of the person
19 has committed or is about to commit a violation of the Mutual
20 Insurance Holding Company Act or of any rule, regulation, or order
21 of the director, the director may apply to the district court
22 ~~of Lancaster County~~ for an order enjoining such person, director,
23 officer, employee, or agent from violating or continuing to violate
24 the act or any such rule, regulation, or order and for such other
25 equitable relief as the nature of the case and the interest of the

1 insurer's policyholders, creditors, and shareholders or the public
2 may require.

3 Sec. 62. Section 44-8216, Revised Statutes Supplement,
4 2007, is amended to read:

5 44-8216 (1) This section provides for the creation of
6 special purpose financial captive insurers to diversify and broaden
7 insurers' access to sources of capital.

8 (2) For purposes of this section:

9 (a) Counterparty means a special purpose financial
10 captive insurer's parent or affiliated entity, which is an insurer
11 domiciled in Nebraska that cedes life insurance risks to the
12 special purpose financial captive insurer pursuant to the special
13 purpose financial captive insurer contract;

14 (b) Insolvency or insolvent means that the special
15 purpose financial captive insurer is unable to pay its obligations
16 when they are due, unless those obligations are the subject of a
17 bona fide dispute;

18 (c) Insurance securitization means a package of
19 related risk transfer instruments, capital market offerings, and
20 facilitating administrative agreements, under which a special
21 purpose financial captive insurer obtains proceeds either directly
22 or indirectly through the issuance of securities, and may hold
23 the proceeds in trust to secure the obligations of the special
24 purpose financial captive insurer under one or more special purpose
25 financial captive insurer contracts, in that the investment risk to

1 the holders of the securities is contingent upon the obligations of
2 the special purpose financial captive insurer to the counterparty
3 under the special purpose financial captive insurer contract in
4 accordance with the transaction terms and pursuant to the Captive
5 Insurers Act;

6 (d) Organizational document means the special purpose
7 financial captive insurer's articles of incorporation, articles of
8 organization, bylaws, operating agreement, or other foundational
9 documents that establish the special purpose financial captive
10 insurer as a legal entity or prescribes its existence;

11 (e) Permitted investments means those investments that
12 meet the qualifications set forth in section 44-8211;

13 (f) Securities means debt obligations, equity
14 investments, surplus certificates, surplus notes, funding
15 agreements, derivatives, and other legal forms of financial
16 instruments;

17 (g) Special purpose financial captive insurer means a
18 captive insurer which has received a certificate of authority from
19 the director for the limited purposes provided for in this section;

20 (h) Special purpose financial captive insurer contract
21 means a contract between the special purpose financial captive
22 insurer and the counterparty pursuant to which the special
23 purpose financial captive insurer agrees to provide insurance
24 or reinsurance protection to the counterparty for risks associated
25 with the counterparty's insurance or reinsurance business; and

1 (i) Special purpose financial captive insurer securities
2 means the securities issued by a special purpose financial captive
3 insurer.

4 (3) (a) The provisions of the Captive Insurers Act, other
5 than those in subdivision (3)(b) of this section, apply to a
6 special purpose financial captive insurer. If a conflict occurs
7 between a provision of the act not in this section and a provision
8 of this section, the latter controls.

9 (b) The requirements of this section shall not apply to
10 specific special purpose financial captive insurers if the director
11 finds a specific requirement is inappropriate due to the nature of
12 the risks to be insured by the special purpose financial captive
13 insurer and if the special purpose financial captive insurer
14 meets criteria established by rules and regulations adopted and
15 promulgated by the director.

16 (4) A special purpose financial captive insurer may be
17 established as a stock corporation, limited liability company,
18 partnership, or other form of organization approved by the
19 director.

20 (5) (a) A special purpose financial captive insurer may
21 not issue a contract for assumption of risk or indemnification
22 of loss other than a special purpose financial captive insurer
23 contract. However, the special purpose financial captive insurer
24 may cede risks assumed through a special purpose financial captive
25 insurer contract to third-party reinsurers through the purchase of

1 reinsurance or retrocession protection if approved by the director.

2 (b) A special purpose financial captive insurer may enter
3 into contracts and conduct other commercial activities related
4 or incidental to and necessary to fulfill the purposes of the
5 special purpose financial captive insurer contract, insurance
6 securitization, and this section. Those activities may include,
7 but are not limited to: Entering into special purpose financial
8 captive insurer contracts; issuing securities of the special
9 purpose financial captive insurer in accordance with applicable
10 securities law; complying with the terms of these contracts
11 or securities; entering into trust, swap, tax, administration,
12 reimbursement, or fiscal agent transactions; or complying with
13 trust indenture, reinsurance, retrocession, and other agreements
14 necessary or incidental to effectuate an insurance securitization
15 in compliance with this section and in the plan of operation
16 approved by the director.

17 (6)(a) A special purpose financial captive insurer may
18 issue securities, subject to and in accordance with applicable law,
19 its approved plan of operation, and its organization documents.

20 (b) A special purpose financial captive insurer, in
21 connection with the issuance of securities, may enter into and
22 perform all of its obligations under any required contracts to
23 facilitate the issuance of these securities.

24 (c) The obligation to repay principal or interest, or
25 both, on the securities issued by the special purpose financial

1 captive insurer shall be designed to reflect the risk associated
2 with the obligations of the special purpose financial captive
3 insurer to the counterparty under the special purpose financial
4 captive insurer contract.

5 (7) A special purpose financial captive insurer may
6 enter into swap agreements, or other forms of asset management
7 agreements, including guaranteed investment contracts, or other
8 transactions that have the objective of leveling timing differences
9 in funding of up-front or ongoing transaction expenses or managing
10 asset, credit, prepayment, or interest rate risk of the investments
11 in the trust to ensure that the investments are sufficient to
12 assure payment or repayment of the securities, and related interest
13 or principal payments, issued pursuant to a special purpose
14 financial captive insurer insurance securitization transaction or
15 the obligations of the special purpose financial captive insurer
16 under the special purpose financial captive insurer contract or for
17 any other purpose approved by the director. All asset management
18 agreements entered into by the special purpose financial captive
19 insurer must be approved by the director.

20 (8)(a) A special purpose financial captive insurer, at
21 any given time, may enter into and effectuate a special purpose
22 financial captive insurer contract with a counterparty if the
23 special purpose financial captive insurer contract obligates
24 the special purpose financial captive insurer to indemnify the
25 counterparty for losses and contingent obligations of the special

1 purpose financial captive insurer under the special purpose
2 financial captive insurer contract are securitized through a
3 special purpose financial captive insurer insurance securitization,
4 which security for such obligations may be funded and secured with
5 assets held in trust for the benefit of the counterparty pursuant
6 to agreements contemplated by this section and invested in a manner
7 that meet the criteria as provided in section 44-8211.

8 (b) A special purpose financial captive insurer may
9 enter into agreements with affiliated companies and third parties
10 and conduct business necessary to fulfill its obligations and
11 administrative duties incidental to the insurance securitization
12 and the special purpose financial captive insurer contract. The
13 agreements may include management and administrative services
14 agreements and other allocation and cost sharing agreements, or
15 swap and asset management agreements, or both, or agreements for
16 other contemplated types of transactions provided in this section.

17 (c) A special purpose financial captive insurer contract
18 must contain provisions that:

19 (i) Require the special purpose financial captive insurer
20 to either (A) enter into a trust agreement specifying what
21 recoverables or reserves, or both, the agreement is to cover and to
22 establish a trust account for the benefit of the counterparty and
23 the security holders or (B) establish such other method of security
24 acceptable to the director;

25 (ii) Stipulate that assets deposited in the trust account

1 must be valued in accordance with their current fair market value
2 and must consist only of permitted investments;

3 (iii) If a trust arrangement is used, require the special
4 purpose financial captive insurer, before depositing assets with
5 the trustee, to execute assignments, to execute endorsements in
6 blank, or to take such actions as are necessary to transfer
7 legal title to the trustee of all shares, obligations, or other
8 assets requiring assignments, in order that the counterparty, or
9 the trustee upon the direction of the counterparty, may negotiate
10 whenever necessary the assets without consent or signature from the
11 special purpose financial captive insurer or another entity; and

12 (iv) If a trust arrangement is used, stipulate that the
13 special purpose financial captive insurer and the counterparty
14 agree that the assets in the trust account, established pursuant
15 to the provisions of the special purpose financial captive insurer
16 contract, may be withdrawn by the counterparty, or the trustee on
17 its behalf, at any time, only in accordance with the terms of
18 the special purpose financial captive insurer contract, and must
19 be utilized and applied by the counterparty or any successor of
20 the counterparty by operation of law, including, subject to the
21 provisions of this section, but without further limitation, any
22 liquidator, rehabilitator, or receiver of the counterparty, without
23 diminution because of insolvency on the part of the counterparty
24 or the special purpose financial captive insurer, only for the
25 purposes set forth in the credit for reinsurance laws and rules and

1 regulations of this state.

2 (d) The special purpose financial captive insurer
3 contract may contain provisions that give the special purpose
4 financial captive insurer the right to seek approval from the
5 counterparty to withdraw from the trust all or part of the assets,
6 or income from them, contained in the trust and to transfer the
7 assets to the special purpose financial captive insurer if such
8 provisions comply with the credit for reinsurance laws and rules
9 and regulations of this state.

10 (9) A special purpose financial captive insurer contract
11 meeting the provisions of this section must be granted credit
12 for reinsurance treatment or otherwise qualify as an asset or
13 a reduction from liability for reinsurance ceded by a domestic
14 insurer to a special purpose financial captive insurer as an
15 assuming insurer for the benefit of the counterparty if and only to
16 the extent:

17 (a) Of the value of the assets held in trust for, or
18 clean, irrevocable, unconditional letters of credit, issued or
19 confirmed by a qualified United States financial institution as
20 defined in section 44-416.08, or as approved by the director, for
21 the benefit of the counterparty under the special purpose financial
22 captive insurer contract; and

23 (b) The assets are held or invested in one or more of the
24 forms allowed in section 44-8211.

25 (10) (a) (i) Notwithstanding the provisions of the Nebraska

1 Insurers Supervision, Rehabilitation, and Liquidation Act, the
2 director may apply to the district court of ~~Lancaster County~~ for
3 an order authorizing the director to rehabilitate or liquidate a
4 special purpose financial captive insurer domiciled in this state
5 on one or more of the following grounds:

6 (A) There has been embezzlement, wrongful sequestration,
7 dissipation, or diversion of the assets of the special purpose
8 financial captive insurer intended to be used to pay amounts owed
9 to the counterparty or the holders of special purpose financial
10 captive insurer securities; or

11 (B) The special purpose financial captive insurer is
12 insolvent and the holders of a majority in outstanding principal
13 amount of each class of special purpose financial captive insurer
14 securities request or consent to conservation, rehabilitation, or
15 liquidation pursuant to the provisions of this section.

16 (ii) The court may not grant relief provided by
17 subdivision (10)(a)(i) of this section unless, after notice and a
18 hearing, the director establishes that relief must be granted.

19 (b) Notwithstanding any other applicable law, rule, or
20 regulation, upon any order of rehabilitation or liquidation of
21 a special purpose financial captive insurer, the receiver shall
22 manage the assets and liabilities of the special purpose financial
23 captive insurer pursuant to the provisions of subsection (11) of
24 this section.

25 (c) With respect to amounts recoverable under a special

1 purpose financial captive insurer contract, the amount recoverable
2 by the receiver must not be reduced or diminished as a result
3 of the entry of an order of conservation, rehabilitation, or
4 liquidation with respect to the counterparty, notwithstanding
5 another provision in the contracts or other documentation
6 governing the special purpose financial captive insurer insurance
7 securitization.

8 (d) An application or petition, or a temporary
9 restraining order or injunction issued pursuant to the provisions
10 of the Nebraska Insurers Supervision, Rehabilitation, and
11 Liquidation Act, with respect to a counterparty does not prohibit
12 the transaction of a business by a special purpose financial
13 captive insurer, including any payment by a special purpose
14 financial captive insurer made pursuant to a special purpose
15 financial captive insurer security, or any action or proceeding
16 against a special purpose financial captive insurer or its assets.

17 (e) Notwithstanding the provisions of any applicable law
18 or rule or regulation, the commencement of a summary proceeding
19 or other interim proceeding commenced before a formal delinquency
20 proceeding with respect to a special purpose financial captive
21 insurer, and any order issued by the court, does not prohibit
22 the payment by a special purpose financial captive insurer made
23 pursuant to a special purpose financial captive insurer security or
24 special purpose financial captive insurer contract or the special
25 purpose financial captive insurer from taking any action required

1 to make the payment.

2 (f) Notwithstanding the provisions of any other
3 applicable law, rule, or regulation:

4 (i) A receiver of a counterparty may not void a
5 nonfraudulent transfer by a counterparty to a special purpose
6 financial captive insurer of money or other property made pursuant
7 to a special purpose financial captive insurer contract; and

8 (ii) A receiver of a special purpose financial captive
9 insurer may not void a nonfraudulent transfer by the special
10 purpose financial captive insurer of money or other property made
11 to a counterparty pursuant to a special purpose financial captive
12 insurer contract or made to or for the benefit of any holder of
13 a special purpose financial captive insurer security on account of
14 the special purpose financial captive insurer security.

15 (g) With the exception of the fulfillment of the
16 obligations under a special purpose financial captive insurer
17 contract, and notwithstanding the provisions of any other
18 applicable law or rule or regulation, the assets of a special
19 purpose financial captive insurer, including assets held in trust,
20 must not be consolidated with or included in the estate of a
21 counterparty in any delinquency proceeding against the counterparty
22 pursuant to the provisions of this section for any purpose
23 including, without limitation, distribution to creditors of the
24 counterparty.

25 (11) A special purpose financial captive insurer may

1 not declare or pay dividends in any form to its owners other
2 than in accordance with the insurance securitization transaction
3 agreements, and in no instance shall the dividends decrease the
4 capital of the special purpose financial captive insurer below
5 two hundred fifty thousand dollars, and, after giving effect to
6 the dividends, the assets of the special purpose financial captive
7 insurer, including any assets held in trust pursuant to the terms
8 of the insurance securitization, must be sufficient to satisfy
9 the director that it can meet its obligations. Approval by the
10 director of an ongoing plan for the payment of dividends, interest
11 on securities, or other distribution by a special purpose financial
12 captive insurer must be conditioned upon the retention, at the time
13 of each payment, of capital or surplus equal to or in excess of
14 amounts specified by, or determined in accordance with formulas
15 approved for the special purpose financial captive insurer by, the
16 director.

17 (12) Information submitted pursuant to the provisions
18 of this section shall be given confidential treatment, shall not
19 be subject to subpoena, and shall not be made public by the
20 director or any other person, except to other state, federal,
21 foreign, and international regulatory and law enforcement agencies
22 if the recipient agrees in writing to maintain the confidentiality
23 of the information, without the prior written consent of the
24 special purpose financial captive insurer unless the director,
25 after giving the special purpose financial captive insurer notice

1 and opportunity to be heard, determines that the best interest of
2 policyholders, shareholders, or the public will be served by the
3 publication thereof, in which event he or she may publish all or
4 any part thereof in such manner as he or she may deem appropriate.

5 Sec. 63. Section 45-191.08, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 45-191.08 (1)(a) The director in his or her discretion
8 may make such investigations within or without this state as
9 necessary to determine whether any person has violated or is
10 about to violate sections 45-189 to 45-191.11 or to aid in the
11 enforcement of such sections or in the adopting or promulgating
12 of rules, regulations, and forms under such sections. In the
13 discretion of the director, the actual expense of any such
14 investigation may be charged to any person who is the subject
15 of such investigation.

16 (b) The department may publish information concerning any
17 violation of such sections or any rule, regulation, or order of the
18 department.

19 (c) For purposes of any investigation or proceeding under
20 such sections, the director or any officer designated by him or her
21 may administer oaths and affirmations, subpoena witnesses, compel
22 their attendance, take evidence, and require the production of
23 any books, papers, correspondence, memoranda, agreements, or other
24 documents or records which the director deems relevant or material
25 to the inquiry.

1 (2) (a) In case of contumacy by or refusal to obey a
2 subpoena issued to any person, any court of competent jurisdiction,
3 upon application by the director, may issue an order to that
4 person requiring him or her to appear before the director or an
5 officer designated by the director to produce documentary evidence
6 or to give evidence touching on a matter under investigation or in
7 question. Any failure to obey an order of the court may be punished
8 by the court as a contempt of court.

9 (b) The request for order of compliance may be addressed
10 to either (i) ~~the district court of Lancaster County or the~~
11 district court in the county where service may be obtained on the
12 person refusing to testify or produce, if the person is within this
13 state, or (ii) the appropriate district court of this state having
14 jurisdiction over the person refusing to testify or produce, if the
15 person is outside this state.

16 Sec. 64. Section 45-717, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 45-717 (1) The department may order any person to cease
19 and desist whenever the department determines that the person
20 has violated any provision of the Mortgage Bankers Registration
21 and Licensing Act. Upon entry of a cease and desist order, the
22 director shall promptly notify the affected person that such order
23 has been entered, of the reasons for such order, and that upon
24 receipt, within fifteen business days after the date of the order,
25 of written request from the affected person a hearing will be

1 scheduled within thirty business days after the date of receipt of
2 the written request unless the parties consent to a later date or
3 the hearing officer sets a later date for good cause. If a hearing
4 is not requested and none is ordered by the director, the order
5 shall remain in effect until it is modified or vacated.

6 (2) The director may vacate or modify a cease and desist
7 order if he or she finds that the conditions which caused its entry
8 have changed or that it is otherwise in the public interest to do
9 so.

10 (3) A person aggrieved by a cease and desist order of
11 the director may obtain judicial review of the order in the manner
12 prescribed in the Administrative Procedure Act. The director may
13 obtain an order from the district court of ~~Lancaster County~~ for the
14 enforcement of the cease and desist order.

15 (4) A person who violates a cease and desist order of
16 the director may, after notice and hearing and upon further order
17 of the director, be subject to a penalty of not more than five
18 thousand dollars for each act in violation of the cease and desist
19 order.

20 (5) Nothing in the Mortgage Bankers Registration and
21 Licensing Act shall limit any statutory or common-law right of any
22 person to bring any action in any court for any act involved in the
23 mortgage banking business or the right of the state to punish any
24 person for any violation of law.

25 Sec. 65. Section 45-717.02, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 45-717.02 (1) For the purpose of any investigation or
3 proceeding under the Mortgage Bankers Registration and Licensing
4 Act, the director or any officer designated by him or her may
5 administer oaths and affirmations, subpoena witnesses and compel
6 their attendance, take evidence, and require the production of
7 any books, papers, correspondence, memoranda, agreements, or other
8 documents or records which the director deems relevant or material
9 to the inquiry. If any person refuses to comply with a subpoena
10 issued under this section or to testify with respect to any matter
11 relevant to the proceeding, the district court ~~of Lancaster County~~
12 may, on application of the director, issue an order requiring the
13 person to comply with the subpoena and to testify. Failure to obey
14 an order of the court to comply with the subpoena may be punished
15 by the court as civil contempt.

16 (2) The director may request the Attorney General to
17 enforce the Mortgage Bankers Registration and Licensing Act. A
18 civil enforcement action by the Attorney General may be filed in
19 the district court ~~of Lancaster County~~. A civil enforcement action
20 by the Attorney General may seek temporary and permanent injunctive
21 relief, restitution for a borrower aggrieved by a violation of
22 the act, and costs for the investigation and prosecution of the
23 enforcement action.

24 (3) Except when expressly authorized, there shall be no
25 private cause of action for any violation of the Mortgage Bankers

1 Registration and Licensing Act.

2 (4) Failure to comply with the Mortgage Bankers
3 Registration and Licensing Act shall not affect the validity or
4 enforceability of any mortgage loan. A person acquiring a mortgage
5 loan or an interest in a mortgage loan is not required to ascertain
6 the extent of compliance with the act.

7 Sec. 66. Section 45-921, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 45-921 (1) The director may examine or investigate
10 complaints about or reports of alleged violations of the Delayed
11 Deposit Services Licensing Act or any rule, regulation, or order
12 of the director thereunder. The director may order the actual cost
13 of such examination or investigation to be paid by the person who
14 is the subject of the examination or investigation, whether the
15 alleged violator is licensed or not.

16 (2) The director may publish information concerning any
17 violation of the act or any rule, regulation, or order of the
18 director under the act.

19 (3) For purposes of any investigation, examination,
20 or proceeding under the act, the director may administer oaths
21 and affirmations, subpoena witnesses, compel their attendance,
22 take evidence, and require the production of any books, papers,
23 correspondence, memoranda, agreements, or other documents or
24 records which the director deems relevant or material to the
25 examination, investigation, or proceeding.

1 (4) In the case of contumacy by or refusal to obey a
2 subpoena issued to any person, the district court, ~~of Lancaster~~
3 ~~County,~~ upon application by the director, may issue an order
4 requiring such person to appear before the director and to produce
5 documentary evidence if so ordered to give evidence on the matter
6 under investigation or in question. Failure to obey the order of
7 the court may be punished by the court as contempt.

8 (5) Upon receipt by a licensee of a notice of
9 investigation or inquiry request for information from the
10 department, the licensee shall respond within twenty-one calendar
11 days. Each day a licensee fails to respond as required by this
12 subsection shall constitute a separate violation.

13 (6) If the director finds, after notice and opportunity
14 for hearing in accordance with the Administrative Procedure Act,
15 that any person has violated subsection (5) of this section, the
16 director may order such person to pay (a) an administrative fine
17 of not more than one thousand dollars for each separate violation
18 and (b) the costs of investigation. ~~All fines collected by the~~
19 ~~department pursuant to this subsection shall be remitted to the~~
20 ~~State Treasurer for credit to the permanent school fund. The~~
21 ~~department shall remit fines collected under this subsection to the~~
22 ~~State Treasurer for distribution in accordance with Article VII,~~
23 ~~section 5, of the Constitution of Nebraska.~~

24 (7) If a person fails to pay an administrative fine and
25 the costs of investigation ordered pursuant to subsection (6) of

1 this section, a lien in the amount of such fine and costs may be
2 imposed upon all assets and property of such person in this state
3 and may be recovered in a civil action by the director. The lien
4 shall attach to the real property of such person when notice of the
5 lien is filed and indexed against the real property in the office
6 of the register of deeds in the county where the real property is
7 located. The lien shall attach to any other property of such person
8 when notice of the lien is filed against the property in the manner
9 prescribed by law. Failure of the person to pay such fine and
10 costs shall constitute a separate violation of the Delayed Deposit
11 Services Licensing Act.

12 Sec. 67. Section 45-924, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 45-924 If the director believes that any person has
15 engaged in or is about to engage in any act or practice
16 constituting a violation of the Delayed Deposit Services Licensing
17 Act or a violation of any rule, regulation, or order of the
18 director thereunder, the director may initiate an action in the
19 district court ~~of Lancaster County~~ to enjoin such acts or practices
20 and to enforce compliance with the act or any order under the
21 act. Upon a proper showing a permanent or temporary injunction,
22 restraining order, or writ of mandamus shall be granted or a
23 receiver or conservator may be appointed for the defendant's
24 assets. The director shall not be required to post a bond.

25 Sec. 68. Section 48-638, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 48-638 Any party to the proceedings before the appeal
3 tribunal may appeal the tribunal's decision by filing a petition
4 (1) in the district court of the county in which the individual
5 claiming benefits claims to have been last employed or in which
6 such claimant resides, (2) in any district court of this state upon
7 which the parties may agree, or (3) if neither subdivision (1) or
8 (2) of this section applies, then in ~~the~~ any other district court
9 ~~of Lancaster County.~~ having jurisdiction over the parties. If the
10 commissioner is not the petitioning party, he or she shall be a
11 party defendant in every appeal. Such appeal shall otherwise be
12 governed by the Administrative Procedure Act.

13 Sec. 69. Section 48-813, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 48-813 (1) Whenever the jurisdiction of the Commission
16 of Industrial Relations is invoked, notice of the pendency of the
17 proceedings shall be given in such manner as the commission shall
18 provide for serving a copy of the petition and notice of filing
19 upon the adverse party. An employer or labor organization may be
20 served by sending a copy of the petition filed to institute the
21 proceedings and a notice of filing, which shall show the filing
22 date, in the manner provided for service of a summons in a civil
23 action. Such employer or labor organization shall have twenty days
24 after receipt of the petition and notice of filing in which to
25 serve and file its response.

1 (2) When a petition is filed to resolve an industrial
2 dispute, a hearing shall mandatorily be held within sixty days from
3 the date of filing thereof. A recommended decision and order in
4 cases arising under section 48-818, an order in cases not arising
5 under section 48-818, and findings if required, shall mandatorily
6 be made and entered thereon within thirty days after such hearing.
7 The time requirements specified in this section may be extended
8 for good cause shown on the record or by agreement of the parties.
9 Failure to meet such mandatory time requirements shall not deprive
10 the commission of jurisdiction. However, if the commission fails
11 to hold a hearing on the industrial dispute within sixty days of
12 filing or has failed to make a recommended decision and order,
13 and findings of fact if required, in cases arising under section
14 48-818, or an order, and findings of fact if required, in cases
15 not arising under section 48-818, and findings, within thirty days
16 after the hearing and good cause is not shown on the record or
17 the parties to the dispute have not jointly stipulated to the
18 enlargement of the time limit, then either party may file an action
19 for mandamus in the district court ~~for Lancaster County~~ to require
20 the commission to hold the hearing or to render its order and
21 findings if required. For purposes of this section, the hearing
22 on an industrial dispute shall not be deemed completed until the
23 record is prepared and counsel briefs have been submitted, if such
24 are required by the commission.

25 (3) Any party, including the State of Nebraska or any

1 of its employer-representatives as defined in section 81-1371 or
2 any political subdivision of the State of Nebraska, may waive such
3 notice and may enter a voluntary appearance in any matter in the
4 Commission of Industrial Relations. The giving of such notice in
5 such manner shall subject the employers, the labor organizations,
6 and the persons therein to the jurisdiction of the Commission of
7 Industrial Relations.

8 Sec. 70. Section 54-1914, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 54-1914 The director shall have the following additional
11 powers:

12 (1) Whenever he or she has reason to believe that
13 any licensee may be in possession of information relevant to
14 an investigation by him or her of suspected violations of the
15 provisions of the Nebraska Meat and Poultry Inspection Law or
16 regulations promulgated thereunder, the director may require such
17 person to file with him or her in such form as he or she
18 may prescribe special reports or answers in writing to specific
19 questions, furnishing such information. Such reports and answers
20 shall be made under oath and shall be filed with the director
21 within such reasonable period as the director may prescribe, unless
22 additional time is granted in any case upon prompt application for
23 same.

24 (2) To have access to all establishments, including any
25 premises where a mobile or remote processing unit is located or

1 utilized, for the purposes of examination or inspection or both
2 at all times and the right to copy any documentary evidence
3 of any person being investigated or proceeded against, and may
4 require by subpoena the attendance and testimony of witnesses and
5 the production of all documentary evidence of any person or the
6 taking of a deposition relating to any matter under his or her
7 investigation. The director may sign subpoenas and may administer
8 oaths and affirmations, examine witnesses, and receive evidence
9 in accordance with the provisions of section 54-1905. In case of
10 disobedience to a subpoena, the director may invoke the aid of the
11 district court ~~of Lancaster County~~ in requiring the attendance and
12 testimony of witnesses and the production of documentary evidence.
13 If any person fails to obey an order of the court, he or she may be
14 punished by the court as for contempt thereof. Witnesses summoned
15 or required to give depositions shall be paid the same fees that
16 are paid witnesses in the district courts of this state and mileage
17 at the same rate provided in section 81-1176 for state employees.

18 No person shall be excused from attending and testifying
19 or from producing books, papers, schedules of charges, contracts,
20 agreements, or other documentary evidence before the director or in
21 obedience to the subpoena of the director, whether such subpoena
22 be signed or issued by the director or his or her delegate, or
23 in any cause or proceeding, criminal or otherwise, based upon or
24 growing out of any alleged violation of the Nebraska Meat and
25 Poultry Inspection Law, or of any amendments thereto, on the ground

1 or for the reason that the testimony or evidence, documentary or
2 otherwise, required of him or her may tend to incriminate him
3 or her or subject him or her to a penalty or forfeiture; but
4 no individual shall be prosecuted or subjected to a penalty or
5 forfeiture for or on account of any transaction, matter, or thing
6 concerning which he or she is compelled, after having claimed his
7 or her privilege against self-incrimination, to testify or produce
8 evidence, documentary or otherwise, except that any individual so
9 testifying shall not be exempt from prosecution and punishment for
10 perjury committed in so testifying.

11 Sec. 71. Section 59-1611, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 59-1611 (1) Whenever the Attorney General believes that
14 any person may be in possession, custody, or control of any
15 original or copy of any book, record, report, memorandum, paper,
16 communication, tabulation, map, chart, photograph, mechanical
17 transcription, or other tangible document or recording, wherever
18 situated, which he or she believes to be relevant to the subject
19 matter of an investigation of a possible violation of sections
20 59-1602 to 59-1606, the Attorney General may, prior to the
21 institution of a civil proceeding thereon, execute in writing and
22 cause to be served upon such a person a civil investigative demand
23 requiring such person to produce such documentary material and
24 permit inspection and copying thereof. This section shall not be
25 applicable to criminal prosecutions.

1 (2) Each such demand shall:

2 (a) State the statute and section or sections thereof the
3 alleged violation of which is under investigation, and the general
4 subject matter of the investigation;

5 (b) Describe the class or classes of documentary material
6 to be produced thereunder with reasonable specificity so as fairly
7 to indicate the material demanded;

8 (c) Prescribe a return date within which the documentary
9 material shall be produced; and

10 (d) Identify the members of the Attorney General's staff
11 to whom such documentary material shall be made available for
12 inspection and copying.

13 (3) No such demand shall:

14 (a) Contain any requirement which would be unreasonable
15 or improper if contained in a subpoena duces tecum issued by a
16 court of this state; or

17 (b) Require the disclosure of any documentary material
18 which would be privileged, or which for any other reason would not
19 be required by a subpoena duces tecum issued by a court of this
20 state.

21 (4) Service of any such demand may be made by:

22 (a) Delivering a duly executed copy thereof to the person
23 to be served, or, if such person is not a natural person, to any
24 officer of the person to be served;

25 (b) Delivering a duly executed copy thereof to the

1 principal place of business in this state of the person to be
2 served; or

3 (c) Mailing by certified mail a duly executed copy
4 thereof addressed to the person to be served at the principal place
5 of business in this state, or, if such person has no place of
6 business in this state, to his or her principal office or place of
7 business.

8 (5) Documentary material demanded pursuant to the
9 provisions of this section shall be produced for inspection and
10 copying during normal business hours at the principal office or
11 place of business of the person served, or at such other times and
12 places as may be agreed upon by the person served and the Attorney
13 General.

14 (6) No documentary material produced pursuant to a
15 demand, or copies thereof, shall, unless otherwise ordered by
16 a district court for good cause shown, be produced for inspection
17 or copying by, nor shall the contents thereof be disclosed to,
18 other than an authorized employee of the Attorney General, without
19 the consent of the person who produced such material, except that
20 under such reasonable terms and conditions as the Attorney General
21 shall prescribe, the copies of such documentary material shall be
22 available for inspection and copying by the person who produced
23 such material or any duly authorized representative of such person.
24 The Attorney General or any assistant attorney general may use such
25 copies of documentary material as he or she determines necessary

1 in the enforcement of the Consumer Protection Act, including
2 presentation before any court, except that any such material which
3 contains trade secrets shall not be presented except with the
4 approval of the court in which action is pending after adequate
5 notice to the person furnishing such material.

6 (7) At any time before the return date specified in the
7 demand, or within twenty days after the demand has been served,
8 whichever period is shorter, a petition to extend the return
9 date for or to modify or set aside a demand issued pursuant to
10 subsection (1) of this section, stating good cause, may be filed
11 in the district court for ~~Lancaster County, or in such other~~ the
12 county where the parties reside. A petition by the person on whom
13 the demand is served, stating good cause, to require the Attorney
14 General or any person to perform any duty imposed by the provisions
15 of this section, and all other petitions in connection with a
16 demand, may be filed in the district court for ~~Lancaster County or~~
17 ~~in~~ the county where the parties reside.

18 (8) Whenever any person fails to comply with any civil
19 investigative demand for documentary material duly served upon him
20 or her under this section, or whenever satisfactory copying or
21 reproduction of any such material cannot be done and such person
22 refuses to surrender such material, the Attorney General may file,
23 in the district court of the county in which such person resides,
24 is found, or transacts business, and serve upon such person a
25 petition for an order of such court for the enforcement of this

1 section, except that if such person transacts business in more than
2 one county such petition shall be filed in the county in which such
3 person maintains his or her principal place of business or in such
4 other county as may be agreed upon by the parties to such petition.
5 Whenever any petition is filed in the district court of any county
6 under this section, such court shall have jurisdiction to hear and
7 determine the matter so presented and to enter such order as may
8 be required to carry into effect the provisions of this section.
9 Disobedience of any order entered under this section by any court
10 shall be punished as a contempt thereof.

11 Sec. 72. Section 59-1725, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 59-1725 (1) (a) The Director of Banking and Finance in his
14 or her discretion may make such investigations within or without
15 this state as he or she deems necessary to determine whether any
16 person has violated or is about to violate any provision of the
17 Seller-Assisted Marketing Plan Act or any rule, regulation, or
18 order of the director or to aid in the enforcement of the act or in
19 the adoption or promulgation of rules, regulations, and forms under
20 the act. In the discretion of the director, the actual expense of
21 any such investigation may be charged to the person who is the
22 subject of the investigation.

23 (b) The director may publish information concerning any
24 violation of the act or any rule, regulation, or order of the
25 director.

1 (c) For the purpose of any investigation or proceeding
2 under the act, the director or any officer designated by him or her
3 may administer oaths and affirmations, subpoena witnesses, compel
4 their attendance, take evidence, and require the production of
5 any books, papers, correspondence, memoranda, agreements, or other
6 documents or records which the director deems relevant or material
7 to the inquiry.

8 (2) (a) In case of contumacy by or refusal to obey a
9 subpoena issued to any person, any court of competent jurisdiction,
10 upon application by the director, may issue to that person an order
11 requiring him or her to appear before the director or the officer
12 designated by the director to produce documentary evidence if so
13 ordered or to give evidence touching the matter under investigation
14 or in question. Any failure to obey the order of the court may be
15 punished by the court as a contempt of court.

16 (b) The request for order of compliance may be addressed
17 to either (i) ~~the district court of Lancaster County or the~~
18 district court in the county where service may be obtained on the
19 person refusing to testify or produce if the person is within this
20 state or (ii) the appropriate district court of this state having
21 jurisdiction over the person refusing to testify or produce if the
22 person is outside this state.

23 Sec. 73. Section 66-1529.02, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 66-1529.02 (1) The department may undertake remedial

1 actions in response to a release first reported after July 17,
2 1983, and on or before June 30, 2009, with money available in the
3 fund if:

4 (a) The responsible person cannot be identified or
5 located;

6 (b) An identified responsible person cannot or will not
7 comply with the remedial action requirements; or

8 (c) Immediate remedial action is necessary, as determined
9 by the Director of Environmental Quality, to protect human health
10 or the environment.

11 (2) The department may pay the costs of a third-party
12 claim meeting the requirements of subdivision (2)(f) of section
13 66-1525 with money available in the fund if the responsible person
14 cannot or will not pay the third-party claim.

15 (3) Reimbursement for any damages caused by the
16 department or a person acting at the department's direction while
17 investigating or inspecting or during remedial action on property
18 other than property on which a release or suspected release has
19 occurred shall be considered as part of the cost of remedial action
20 involving the site where the release or suspected release occurred.
21 The costs shall be reimbursed from money available in the fund.
22 If such reimbursement is deemed inadequate by the party claiming
23 the damages, the party's claim for damages caused by the department
24 shall be filed as provided in section 76-705.

25 (4) All expenses paid from the fund under this section,

1 court costs, and attorney's fees may be recovered in a civil action
2 in the district court of Lancaster County. The action may be
3 brought by the county attorney or Attorney General at the request
4 of the director against the responsible person. All recovered
5 expenses shall be deposited into the fund.

6 Sec. 74. Section 67-441, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 67-441 (1) After dissolution, a partner who has
9 not wrongfully dissociated may participate in winding up the
10 partnership's business, but on application of any partner,
11 partner's legal representative, or transferee, the district court
12 in the county where the chief executive office is or was last
13 located or the district court of Lancaster County, for good cause
14 shown, may order judicial supervision of the winding up.

15 (2) The legal representative of the last surviving
16 partner may wind up a partnership's business.

17 (3) A person winding up a partnership's business
18 may preserve the partnership business or property as a going
19 concern for a reasonable time, prosecute and defend actions and
20 proceedings, whether civil, criminal, or administrative, settle
21 and close the partnership's business, dispose of and transfer the
22 partnership's property, discharge the partnership's liabilities,
23 distribute the assets of the partnership pursuant to section
24 67-445, settle disputes by mediation or arbitration, and perform
25 other necessary acts.

1 Sec. 75. Section 69-306, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 69-306 The department, upon the recommendation of the
4 Board of Pharmacy, the Board of Optometry, or the Board of Medicine
5 and Surgery, shall notify the Attorney General of any possible
6 violations of the Mail Order Contact Lens Act. If the Attorney
7 General has reason to believe that an out-of-state person is
8 operating in violation of the act, the Attorney General may
9 commence an action in the district court ~~of Lancaster County~~ to
10 enjoin such person from further mailing, shipping, or otherwise
11 delivering contact lenses into Nebraska.

12 Sec. 76. Section 69-2116, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 69-2116 (1) (a) The Director of Banking and Finance in his
15 or her discretion may make such investigations within or without
16 this state as he or she deems necessary to determine whether any
17 person has violated or is about to violate the Consumer Rental
18 Purchase Agreement Act or to aid in the enforcement of the act
19 or in the adopting and promulgating of rules, regulations, and
20 forms under the act. In the discretion of the director, the actual
21 expense of any such investigation may be charged to the person who
22 is the subject of the investigation.

23 (b) The director may publish information concerning any
24 violation of the act or any rule, regulation, or order of the
25 director.

1 (c) For the purpose of any investigation or proceeding
2 under the act, the director or any officer designated by him or her
3 may administer oaths and affirmations, subpoena witnesses, compel
4 their attendance, take evidence, and require the production of
5 any books, papers, correspondence, memoranda, agreements, or other
6 documents or records which the director deems relevant or material
7 to the inquiry.

8 (2) In case of contumacy by or refusal to obey a subpoena
9 issued to any person, any court of competent jurisdiction, upon
10 application by the director, may issue to that person an order
11 requiring him or her to appear before the director or the officer
12 designated by the director to produce documentary evidence if
13 so ordered or to give evidence touching on the matter under
14 investigation or in question. Any failure to obey the order of the
15 court may be punished by the court as a contempt of court. The
16 request for an order of compliance may be addressed to either (a)
17 ~~the district court of Lancaster County or~~ the district court in
18 the county where service may be obtained on the person refusing to
19 testify or produce, if the person is within this state, or (b) the
20 appropriate district court of the state having jurisdiction over
21 the person refusing to testify or produce, if the person is outside
22 this state.

23 Sec. 77. Section 69-2710, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 69-2710 (1) Before any tobacco product manufacturer

1 may be removed from the directory, the Tax Commissioner shall
2 provide the tobacco product manufacturer thirty days' notice of
3 the intended action and shall post the notice in the directory.
4 The tobacco product manufacturer shall have thirty days to come
5 into compliance with sections 69-2703 to 69-2710 or, in the
6 alternative, secure a temporary injunction against removal in the
7 district court ~~of Lancaster County~~. For purposes of the temporary
8 injunction sought pursuant to this subsection, loss of the ability
9 to sell tobacco products as a result of removal from the directory
10 shall constitute irreparable harm. If after thirty days the tobacco
11 product manufacturer remains in noncompliance and has not obtained
12 a temporary injunction pursuant to this subsection, the tobacco
13 product manufacturer shall be removed from the directory.

14 (2) If the Tax Commissioner determines that a tobacco
15 product manufacturer shall not be included in the directory,
16 such manufacturer may request a contested case before the Tax
17 Commissioner under the Administrative Procedure Act. The Tax
18 Commissioner shall notify the tobacco product manufacturer in
19 writing of the determination not to include it in the directory. A
20 request for hearing shall be made within thirty calendar days after
21 the date of the determination that the manufacturer shall not be
22 included in the directory and shall contain the evidence supporting
23 the manufacturer's compliance with sections 69-2703 to 69-2710.
24 The hearing shall be held within sixty days after the request.
25 At the hearing, the Tax Commissioner shall determine whether the

1 tobacco product manufacturer is in compliance with sections 69-2703
2 to 69-2710 and whether the manufacturer should be listed in the
3 directory. A final decision shall be rendered within thirty days
4 after the hearing. Any decision of the Tax Commissioner may be
5 appealed. The appeal shall be in accordance with the Administrative
6 Procedure Act.

7 (3) The first report of stamping agents required by
8 subsection (1) of section 69-2708 shall be due thirty calendar
9 days after May 30, 2003, the certifications by a tobacco product
10 manufacturer described in subsection (1) of section 69-2706 shall
11 be due forty-five calendar days after May 30, 2003, and the
12 directory described in subsection (2) of section 69-2706 shall be
13 published or made available within ninety calendar days after May
14 30, 2003.

15 (4) The Tax Commissioner may adopt and promulgate rules
16 and regulations necessary to effect the purposes of sections
17 69-2704 to 69-2710.

18 Sec. 78. Section 70-604.05, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 70-604.05 When it appears that a district or districts
21 are in noncompliance with the provisions of Chapter 70, article 6,
22 the corporate amendments required to comply shall be made generally
23 in accordance with the procedures and requirements contained in
24 Chapter 70, article 6. In the absence of voluntary amendment any
25 time subsequent to six months after the publication of the first

1 federal decennial census published after July 17, 1986, any person
2 residing in the geographical area of alleged noncompliance, or any
3 district or any two or more districts, may file a complaint with
4 the Nebraska Power Review Board against one or more other districts
5 alleging the area of noncompliance of such other districts,
6 whereupon the Nebraska Power Review Board shall issue an order
7 directed to the alleged noncomplying district granting a hearing
8 and requiring it to show cause why an amended petition for creation
9 eliminating such noncompliance should not be filed for approval.
10 Thirty-three days' notice of hearing, which includes mailing time,
11 shall be given to such alleged noncomplying district by either
12 registered or certified mail. The alleged noncomplying district may
13 appear by answer or by petition for amended petition for creation
14 of the district. The burden of proof of noncompliance shall be upon
15 the complainant and of proposed amendments upon the petitioner. If
16 the Nebraska Power Review Board finds that an amended petition for
17 creation should be made and the alleged noncomplying district has
18 not proposed an acceptable one, the Nebraska Power Review Board
19 shall frame the amendment to be approved after continuing the
20 hearing to receive such evidence as may be offered by the parties
21 having appeared before the Nebraska Power Review Board regarding
22 the contents of the amendment to be framed by the Nebraska Power
23 Review Board.

24 The members of the board of directors of any noncomplying
25 district, including any district failing to comply with an amended

1 petition as framed by the Nebraska Power Review Board, shall each
2 be liable for a civil penalty of fifty dollars for each day of
3 noncompliance which continues after thirty days following final
4 adjudication of noncompliance. Such penalty shall be recovered ~~for~~
5 ~~the benefit of the permanent school fund~~ in an action brought
6 by the Attorney General in the district court. The penalty shall
7 be remitted to the State Treasurer for distribution in accordance
8 with Article VII, section 5, of the Constitution of Nebraska. ~~for~~
9 ~~Lancaster County.~~ Service of summons in such action may be had
10 anywhere in the state. No member of any such board shall receive
11 any compensation or reimbursement of expenses during the period for
12 which he or she is liable to such penalty, nor shall he or she be
13 eligible as a candidate for reelection.

14 Sec. 79. Section 70-1019, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 70-1019 In any proceeding had before it under the
17 provisions of Chapter 70, article 10, the board shall have
18 authority, by subpoena, to compel the attendance of witnesses,
19 and the production of any books, papers, records, accounts, or
20 other documents which may be necessary to assist in a determination
21 of any matter pending before the board. If any person shall
22 disobey any such subpoena or refuse to testify concerning any
23 matter regarding which he or she may be lawfully interrogated, the
24 district court, ~~of Lancaster County,~~ upon application by the board,
25 may compel obedience by proceedings for contempt as in the case

1 of disobedience to the requirements of a subpoena issued from such
2 court or a refusal to testify therein.

3 Sec. 80. Section 71-2408, Revised Statutes Supplement,
4 2007, is amended to read:

5 71-2408 (1) The Department of Health and Human Services,
6 after notice and an opportunity for a hearing, may deny, refuse
7 renewal of, revoke, or otherwise discipline or restrict the
8 license of a mail service pharmacy for (a) any discipline of the
9 pharmacy license held by such pharmacy in another state pursuant
10 to subdivision (2)(a) of section 71-2407, (b) any violation of
11 the Mail Service Pharmacy Licensure Act or rules and regulations
12 adopted and promulgated under the act, or (c) conduct by such
13 pharmacy which in this state presents a threat to the public health
14 and safety or a danger of death or physical harm.

15 (2) The department, upon the recommendation of the Board
16 of Pharmacy, shall notify the Attorney General of any possible
17 violations of the Mail Service Pharmacy Licensure Act. If the
18 Attorney General has reason to believe that an out-of-state person
19 is operating in violation of the act, he or she shall commence
20 an action in the district court ~~of Lancaster County~~ to enjoin any
21 such person from further mailing, shipping, or otherwise delivering
22 prescription drugs into the State of Nebraska.

23 Sec. 81. Section 75-140, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 75-140 Whenever any person violates or disobeys an order

1 issued by the commission which has been finally established, the
2 commission or any person interested in such order may petition
3 to the district court of ~~Lancaster County~~ alleging violation or
4 disobedience thereof. The court may determine the matter on such
5 notice to the person complained of as the court deems reasonable.
6 The notice may be served on such person as the court directs.

7 Sec. 82. Section 75-156, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 75-156 (1) In addition to other penalties and relief
10 provided by law, the Public Service Commission may, upon a finding
11 that the violation is proven by clear and convincing evidence,
12 assess a civil penalty of up to ten thousand dollars per day
13 against any person, motor carrier, regulated motor carrier, common
14 carrier, contract carrier, grain dealer, or grain warehouseman
15 for each violation of (a) any provision of sections 75-301
16 to 75-390 administered by the commission or section 75-126 as
17 such section applies to any person or carrier specified in
18 sections 75-301 to 75-390, (b) a commission order entered pursuant
19 to the Automatic Dialing-Announcing Devices Act, the Emergency
20 Telephone Communications Systems Act, the Intrastate Pay-Per-Call
21 Regulation Act, the Nebraska Telecommunications Regulation Act,
22 the Nebraska Telecommunications Universal Service Fund Act, or the
23 Telecommunications Relay System Act, (c) any term, condition, or
24 limitation of any certificate or permit issued by the commission
25 pursuant to sections 75-301 to 75-390, (d) any rule, regulation,

1 or order of the commission issued under authority delegated to the
2 commission pursuant to sections 75-301 to 75-390, or (e) any rule,
3 regulation, or order of the commission issued under the authority
4 delegated to the commission pursuant to the Grain Dealer Act or the
5 Grain Warehouse Act.

6 (2) In addition to other penalties and relief provided
7 by law, the Public Service Commission may, upon a finding that
8 the violation is proven by clear and convincing evidence, assess a
9 civil penalty not less than one hundred dollars and not more than
10 one thousand dollars against any jurisdictional utility for each
11 violation of (a) any provision of the State Natural Gas Regulation
12 Act, (b) any rule, regulation, order, or lawful requirement issued
13 by the commission pursuant to the act, (c) any final judgment
14 or decree made by any court upon appeal from any order of
15 the commission, or (d) any term, condition, or limitation of
16 any certificate issued by the commission issued under authority
17 delegated to the commission pursuant to the act. The amount of
18 the civil penalty assessed in each case shall be based on the
19 severity of the violation charged. The commission may compromise
20 or mitigate any penalty prior to hearing if all parties agree.
21 In determining the amount of the penalty, the commission shall
22 consider the appropriateness of the penalty in light of the gravity
23 of the violation and the good faith of the violator in attempting
24 to achieve compliance after notification of the violation is given.

25 (3) In addition to other penalties and relief provided

1 by law, the Public Service Commission may, upon a finding that
2 the violation is proven by clear and convincing evidence, assess
3 a civil penalty of up to ten thousand dollars per day against any
4 wireless carrier for each violation of the Enhanced Wireless 911
5 Services Act or any rule, regulation, or order of the commission
6 issued under authority delegated to the commission pursuant to the
7 act.

8 (4) In addition to other penalties and relief provided
9 by law, the Public Service Commission may, upon a finding that
10 the violation is proven by clear and convincing evidence, assess
11 a civil penalty of up to one thousand dollars against any person
12 for each violation of the Nebraska Uniform Standards for Modular
13 Housing Units Act or the Uniform Standard Code for Manufactured
14 Homes and Recreational Vehicles or any rule, regulation, or order
15 of the commission issued under the authority delegated to the
16 commission pursuant to either act. Each such violation shall
17 constitute a separate violation with respect to each modular
18 housing unit, manufactured home, or recreational vehicle, except
19 that the maximum penalty shall not exceed one million dollars for
20 any related series of violations occurring within one year from the
21 date of the first violation.

22 (5) The civil penalty assessed under this section shall
23 not exceed two million dollars per year for each violation except
24 as provided in subsection (4) of this section. The amount of
25 the civil penalty assessed in each case shall be based on the

1 severity of the violation charged. The commission may compromise
2 or mitigate any penalty prior to hearing if all parties agree.
3 In determining the amount of the penalty, the commission shall
4 consider the appropriateness of the penalty in light of the gravity
5 of the violation and the good faith of the violator in attempting
6 to achieve compliance after notification of the violation is given.

7 (6) Upon notice and hearing in accordance with this
8 section and section 75-157, the commission may enter an order
9 assessing a civil penalty of up to one hundred dollars against any
10 person, firm, partnership, limited liability company, corporation,
11 cooperative, or association for failure to file an annual report
12 or, beginning January 1, 2004, pay the fee as required by section
13 75-116 and as prescribed by commission rules and regulations or
14 for failure to register as required by section 86-125 and as
15 prescribed by commission rules and regulations. Each day during
16 which the violation continues after the commission has issued an
17 order finding that a violation has occurred constitutes a separate
18 offense. Any party aggrieved by an order of the commission under
19 this section may appeal. The appeal shall be in accordance with the
20 Administrative Procedure Act.

21 (7) When any person or party is accused of any violation
22 listed in this section, the commission shall notify such person
23 or party in writing (a) setting forth the date, facts, and nature
24 of each act or omission upon which each charge of a violation
25 is based, (b) specifically identifying the particular statute,

1 certificate, permit, rule, regulation, or order purportedly
2 violated, (c) that a hearing will be held and the time, date, and
3 place of the hearing, (d) that in addition to the civil penalty,
4 the commission may enforce additional penalties and relief as
5 provided by law, and (e) that upon failure to pay any civil penalty
6 determined by the commission, the penalty may be collected by civil
7 action in the district court. ~~of Lancaster County.~~

8 Sec. 83. Section 75-158, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-158 A civil penalty assessed pursuant to section
11 75-156 and unpaid shall constitute a debt to the State of Nebraska
12 which may be collected in the manner of a lien foreclosure or sued
13 for and recovered in a proper form of action in the name of the
14 state in the district court. Any civil penalty collected shall be
15 remitted to the State Treasurer within thirty days after receipt
16 for distribution in accordance with Article VII, section 5, of the
17 Constitution of Nebraska. ~~of Lancaster County. Any civil penalty~~
18 ~~collected shall be transmitted within thirty days from receipt to~~
19 ~~the State Treasurer for credit to the permanent school fund.~~

20 Sec. 84. Section 75-369.04, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 75-369.04 Any order issued by the Superintendent of Law
23 Enforcement and Public Safety under section 75-369.03 shall include
24 at least (1) the date of the order, (2) a description of each act
25 or omission upon which the violation is based, (3) the manner in

1 which and the place where the respondent may pay the civil penalty
 2 or request a hearing within fifteen business days after receipt
 3 of the order, and (4) a notice that if the respondent fails to
 4 respond to the order within fifteen business days after receipt of
 5 the order, the order shall automatically become final and the civil
 6 penalty may be collected by civil action in the district court, ~~of~~
 7 ~~Lancaster County.~~

8 Sec. 85. Section 75-369.06, Reissue Revised Statutes of
 9 Nebraska, is amended to read:

10 75-369.06 Civil penalties assessed pursuant to section
 11 75-369.03 and unpaid shall constitute a debt to the State of
 12 Nebraska which may be collected in the form of a lien foreclosure
 13 or recovered in a proper form of action in the name of the State
 14 of Nebraska in the district court, ~~of Lancaster County.~~ Any civil
 15 penalty collected shall be remitted on a monthly basis to the State
 16 Treasurer for ~~credit to the permanent school fund.~~ distribution
 17 in accordance with Article VII, section 5, of the Constitution of
 18 Nebraska.

19 Sec. 86. Section 75-1012, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 75-1012 (1) Whenever it appears that a private water
 22 company has violated, is violating, or is threatening to violate
 23 any provision of the Water Service Regulation Act or any rule,
 24 regulation, or order of the commission, the commission may
 25 institute a civil suit in the district court ~~of Lancaster County~~

1 for (a) injunctive relief to restrain the private water company
2 from continuing the violation or threat of violation, (b) the
3 assessment and recovery of a civil penalty as provided in section
4 75-1011, or (c) both injunctive relief and civil penalty.

5 (2) On application for injunctive relief and a finding
6 that a private water company is violating or threatening to violate
7 any provisions of the act or any rule, regulation, or order of the
8 commission, the district court shall grant the injunctive relief as
9 the facts may warrant.

10 (3) At the request of the commission, the county attorney
11 shall institute and pursue a suit in the name of the state for
12 injunctive relief or to recover the civil penalty, or both, as
13 authorized in subsection (1) of this section.

14 Sec. 87. Section 76-1315, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 76-1315 (1) A developer, agent, managing agent, or
17 association, or any other person subject to sections 76-1301
18 to 76-1315, shall not make, publish, disseminate, circulate, or
19 place before the public, or cause, directly or indirectly, to
20 be made, published, disseminated, circulated, or placed before
21 the public, in a newspaper or other publication, or in the form
22 of a notice, circular, pamphlet, or letter, or over any radio
23 or television station, or in any other way, an advertisement,
24 announcement, or statement of any sort containing any assertion,
25 representation, or statement which is untrue, deceptive, or

1 misleading. A developer, agent, managing agent, or association
2 shall not file with the agency or make, publish, disseminate,
3 circulate, or deliver to any person or place before the public, or
4 cause, directly or indirectly, to be made, published, disseminated,
5 circulated, or delivered to any person or placed before the public,
6 a financial statement which contains representations which are
7 untrue, deceptive, or misleading.

8 (2) If the developer, agent, managing agent, association,
9 or other person subject to sections 76-1301 to 76-1315 violates
10 any provision thereof, any person or class of persons damaged or
11 otherwise adversely affected by the violation shall have a claim
12 for appropriate relief, which may be brought in the county where
13 the cause of action or part of the cause of action arose. The court
14 may render any contract entered into in this state in violation of
15 sections 76-1301 to 76-1315 void and unenforceable and any money
16 paid under such contract, together with interest at the legal rate
17 for judgments, may be recovered from the date of such payment or
18 such violation, whichever is later. The court may also award such
19 person or class of persons reasonable attorney's fees.

20 (3) Any developer, agent, or managing agent subject to
21 sections 76-1301 to 76-1315 who offers or disposes of a unit or lot
22 in a retirement subdivision or community without having complied
23 with such sections or who violates any provision of such sections
24 shall be guilty of a Class I misdemeanor.

25 (4) Whenever, in the judgment of the agency, any person

1 has engaged or is about to engage in any acts or practices which
2 constitute or will constitute a violation of sections 76-1301 to
3 76-1315, the Attorney General may maintain an action in the name
4 of the State of Nebraska in the district court ~~of Lancaster County~~
5 to abate and temporarily and permanently enjoin such acts and
6 practices, to enforce compliance with the provisions of sections
7 76-1301 to 76-1315, or to seek a civil penalty of not more than
8 ten thousand dollars for each violation, with each day of continued
9 violation to constitute a separate offense. The plaintiff shall not
10 be required to give any bond and court costs shall not be adjudged
11 against the plaintiff.

12 (5) The director of the agency, with the consent of the
13 agency, shall have the power to issue a cease and desist order upon
14 determination that sections 76-1301 to 76-1315 have been or are
15 about to be violated.

16 Sec. 88. Section 76-2118, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 76-2118 Whenever in the judgment of the commission any
19 person has engaged or is about to engage in any acts or practices
20 which constitute or will constitute a violation of the Membership
21 Campground Act, the Attorney General may maintain an action in
22 the name of the State of Nebraska in the district court of the
23 county in which such violation or threatened violation occurred ~~or~~
24 ~~in the district court of Lancaster County~~ to abate and temporarily
25 and permanently enjoin such acts and practices and to enforce

1 compliance with the Membership Campground Act. The Attorney General
2 shall not be required to give any bond nor shall any court costs be
3 adjudged against the state.

4 Sec. 89. Section 76-2119, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 76-2119 The Attorney General may seek a civil penalty
7 of not more than ten thousand dollars for each violation of the
8 Membership Campground Act in the district court ~~of Lancaster~~
9 ~~County~~. Each day of continued violation shall constitute a separate
10 offense.

11 Sec. 90. Section 76-2223, Revised Statutes Supplement,
12 2007, is amended to read:

13 76-2223 The board shall administer and enforce the Real
14 Property Appraiser Act and may:

15 (1) Receive applications for credentialing under the act,
16 process such applications and regulate the issuance of credentials
17 to qualified applicants, and maintain a directory of the names and
18 addresses of persons who receive credentials under the act;

19 (2) Hold meetings, public hearings, informal conferences,
20 and administrative hearings, prepare or cause to be prepared
21 specifications for all appraiser classifications, solicit bids and
22 enter into contracts with one or more educational testing services
23 or organizations for the preparation of a bank of questions and
24 answers for examinations, and administer or contract for the
25 administration of examinations in such places and at such times as

1 deemed appropriate;

2 (3) Develop the specifications for credentialing
3 examinations, including timing, location, and security necessary to
4 maintain the integrity of the examinations;

5 (4) Review from time to time the procedure for selecting
6 individual questions from the bank of questions for use in
7 connection with each scheduled examination and review from time
8 to time the questions in the bank of questions and the related
9 answers to ascertain that they meet the specifications established
10 by the board;

11 (5) Collect all fees required or permitted by the act.
12 The board shall remit all such receipts to the State Treasurer for
13 credit to the Real Property Appraiser Fund. In addition, the board
14 may collect and transmit to the appropriate federal authority any
15 fees established under the Financial Institutions Reform, Recovery,
16 and Enforcement Act of 1989, as the act existed on January 1, 2006;

17 (6) Establish appropriate administrative procedures for
18 disciplinary proceedings conducted pursuant to the Real Property
19 Appraiser Act;

20 (7) Issue subpoenas to compel the attendance of witnesses
21 and the production of books, documents, records, and other papers,
22 administer oaths, and take testimony and require submission of and
23 receive evidence concerning all matters within its jurisdiction. In
24 case of disobedience of a subpoena, the board may make application
25 to the district court ~~of Lancaster County~~ to require the attendance

1 and testimony of witnesses and the production of documentary
2 evidence. If any person fails to obey an order of the court, he or
3 she may be punished by the court as for contempt thereof;

4 (8) Deny, censure, suspend, or revoke an application or
5 credential if it finds that the applicant or credential holder has
6 committed any of the acts or omissions set forth in section 76-2238
7 or otherwise violated the act. Any disciplinary matter may be
8 resolved through informal disposition pursuant to section 84-913;

9 (9) Take appropriate disciplinary action against a
10 credential holder if the board determines that a credential holder
11 has violated any provision of the act or the Uniform Standards of
12 Professional Appraisal Practice;

13 (10) Enter into consent decrees and issue cease and
14 desist orders upon a determination that a violation of the act has
15 occurred;

16 (11) Promote research and conduct studies relating to
17 the profession of real property appraisal, sponsor real property
18 appraisal educational activities, and incur, collect fees for, and
19 pay the necessary expenses in connection with activities which
20 shall be open to all credential holders;

21 (12) Establish and annually adopt minimum standards for
22 appraisals as required under section 76-2237;

23 (13) Adopt and promulgate rules and regulations to
24 carry out the act. The rules and regulations may include
25 provisions establishing minimum standards for schools, courses, and

1 instructors. The rules and regulations shall be adopted pursuant to
2 the Administrative Procedure Act; and

3 (14) Do all other things necessary to carry out the Real
4 Property Appraiser Act.

5 Sec. 91. Section 77-915, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-915 (1) ~~Commencing with taxes imposed for 1985 or~~
8 ~~any subsequent year, if~~ If a taxpayer believes any tax imposed
9 pursuant to Chapter 77, article 9, is unconstitutional and chooses
10 to challenge such tax, the taxpayer shall pay the tax under protest
11 and, within thirty days after payment ~~or within thirty days after~~
12 ~~March 15, 1986, whichever is later,~~ initiate a court challenge to
13 the tax in the district court, of Lancaster County, which challenge
14 shall be heard by the district court de novo.

15 (2) If, by judgment or final order of any court of
16 competent jurisdiction in this state in an action not pending on
17 appeal or error, it is adjudged and determined that such taxes
18 are unconstitutional, such taxes shall be refunded only by applying
19 such refund as a credit against the payment of any such tax falling
20 due thereafter unless special circumstances, as determined by the
21 director, require a refund.

22 Sec. 92. Section 77-2798, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-2798 Except in cases involving the proposed assessment
25 of a deficiency, any taxpayer who claims that the income tax he

1 or she has paid under the Nebraska Revenue Act of 1967 is void in
2 whole or in part, may bring an action, upon the grounds set forth
3 in his or her claim for refund, against the Tax Commissioner for
4 recovery of the whole or any part of the amount paid. Such suit
5 against the Tax Commissioner may be instituted in a district court
6 of Nebraska of appropriate jurisdiction where the taxpayer resides,
7 ~~or in the district court of Lancaster County.~~

8 Sec. 93. Section 77-27,127, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 77-27,127 Any final action of the Tax Commissioner may
11 be appealed, and the appeal shall be in accordance with the
12 Administrative Procedure Act. The appeal provided by this section
13 shall be the exclusive remedy available to any taxpayer, and no
14 other legal or equitable proceedings shall issue to prevent or
15 enjoin the assessment or collection of any tax imposed under the
16 Nebraska Revenue Act of 1967. The appeal provided by this section
17 shall be in the district court, ~~for Lancaster County except as~~
18 ~~provided in section 77-2798.~~

19 Sec. 94. Section 77-5011, Revised Statutes Supplement,
20 2007, is amended to read:

21 77-5011 The chairperson may call special meetings of the
22 commission at such times as its business requires. The chairperson
23 may also administer oaths and affirmations and sign all orders,
24 certificates, and process in the name of the commission. The
25 chairperson shall attest all orders, certificates, and process

1 with the official seal of the commission. In the absence of the
2 chairperson the vice-chairperson may perform the duties of the
3 chairperson. Orders, certificates, and process under the official
4 seal of the commission may be enforced by the district court, ~~for~~
5 ~~Lancaster County.~~

6 Sec. 95. Section 77-5726, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-5726 (1) (a) The credits prescribed in section 77-5725
9 shall be established by filing the forms required by the Tax
10 Commissioner with the income tax return for the year. The credits
11 may be used and shall be applied in the order in which they
12 were first allowed. The credits may be used after any other
13 nonrefundable credits to reduce the taxpayer's income tax liability
14 imposed by sections 77-2714 to 77-27,135. Any decision on how part
15 of the credit is applied shall not limit how the remaining credit
16 could be applied under this section.

17 (b) The taxpayer may use the credit provided in
18 subsection (3) of section 77-5725 to reduce the taxpayer's income
19 tax withholding employer or payor tax liability under section
20 77-2756 or 77-2757 to the extent such liability is attributable to
21 the number of new employees at the project. To the extent of the
22 credit used, such withholding shall not constitute public funds
23 or state tax revenue and shall not constitute a trust fund or be
24 owned by the state. The use by the taxpayer of the credit shall not
25 change the amount that otherwise would be reported by the taxpayer

1 to the employee under section 77-2754 as income tax withheld and
2 shall not reduce the amount that otherwise would be allowed by the
3 state as a refundable credit on an employee's income tax return as
4 income tax withheld under section 77-2755.

5 The amount of credits used against income tax withholding
6 shall not exceed the withholding attributable to new employees at
7 the project. If the amount of credit used by the taxpayer against
8 income tax withholding exceeds this amount, the excess withholding
9 shall be returned to the Department of Revenue in the manner
10 provided in section 77-2756, such excess amount returned shall be
11 considered unused, and the amount of unused credits may be used
12 as otherwise permitted in this section or shall carry over to the
13 extent authorized in subdivision (1)(d) of this section.

14 (c) Credits may be used to obtain a refund of sales and
15 use taxes under the Local Option Revenue Act, the Nebraska Revenue
16 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
17 otherwise refundable that are paid on purchases, including rentals,
18 for use at the project.

19 (d) Credits may be carried over until fully utilized,
20 except that such credits may not be carried over more than nine
21 years after the year of application for a tier 1 or tier 3 project
22 or fourteen years after the year of application for a tier 2 or
23 tier 4 project.

24 (2)(a) No refund claims shall be filed until after the
25 required levels of employment and investment have been met.

1 (b) Refund claims shall be filed no more than once each
2 quarter for refunds under the Nebraska Advantage Act, except that
3 any claim for a refund in excess of twenty-five thousand dollars
4 may be filed at any time.

5 (c) Any refund claim for sales and use taxes on materials
6 incorporated into real estate as a part of the project shall be
7 filed by and the refund paid to the owner of the improvement
8 to real estate. A refund claim for such materials purchased
9 by a purchasing agent shall include a copy of the purchasing
10 agent appointment, the contract price, and a certification by
11 the contractor or repairperson of the percentage of the materials
12 incorporated into the project on which sales and use taxes were
13 paid to Nebraska after appointment as purchasing agent.

14 (d) All refund claims shall be filed, processed, and
15 allowed as any other claim under section 77-2708, except that
16 the amounts allowed to be refunded under the Nebraska Advantage
17 Act shall be deemed to be overpayments and shall be refunded
18 notwithstanding any limitation in subdivision (2)(a) of section
19 77-2708. The refund may be allowed if the claim is filed within
20 three calendar years from the end of the year the required levels
21 of employment and investment are met or within the period set forth
22 in section 77-2708.

23 (e) If a claim for a refund of sales and use taxes
24 under the Local Option Revenue Act or sections 13-319, 13-324, and
25 13-2813 of more than twenty-five thousand dollars is filed by June

1 15 of a given year, the refund shall be made on or after November
2 15 of the same year. If such a claim is filed on or after June
3 16 of a given year, the refund shall not be made until on or
4 after November 15 of the following year. The Tax Commissioner shall
5 notify the affected city, village, county, or municipal county of
6 the amount of refund claims of sales and use taxes under the Local
7 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
8 in excess of twenty-five thousand dollars on or before July 1 of
9 the year before the claims will be paid under this section.

10 (f) Interest shall not be allowed on any sales and use
11 taxes refunded under the Nebraska Advantage Act.

12 (3) The appointment of purchasing agents shall be
13 recognized for the purpose of changing the status of a contractor
14 or repairperson as the ultimate consumer of tangible personal
15 property purchased after the date of the appointment which is
16 physically incorporated into the project and becomes the property
17 of the owner of the improvement to real estate. The purchasing
18 agent shall be jointly liable for the payment of the sales and use
19 tax on the purchases with the owner of the improvement to real
20 estate.

21 (4) A determination that a taxpayer is not engaged in a
22 qualified business or has failed to meet or maintain the required
23 levels of employment or investment for incentives, exemptions, or
24 recapture may be protested to the Tax Commissioner within thirty
25 days after the written determination by the Department of Revenue.

1 The Tax Commissioner shall issue a written order resolving such
2 protests. The determination of the Tax Commissioner may be appealed
3 to the district court ~~of Lancaster County~~ within thirty days after
4 the issuance of the order.

5 Sec. 96. Section 79-1166, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 79-1166 The hearing officer has the power by subpoena
8 to compel the appearance of witnesses and the production of any
9 relevant evidence. Any witness compelled to attend or produce
10 evidence shall be entitled to the fees and expenses allowed in
11 district court. Any failure to respond to such subpoena shall be
12 certified by the hearing officer to the district court ~~of Lancaster~~
13 ~~County~~ for enforcement or for punishment for contempt of the
14 ~~district~~ court.

15 Sec. 97. Section 81-8,211, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 81-8,211 Authority is hereby conferred upon the State
18 Claims Board, acting on behalf of the State of Nebraska, to
19 consider, ascertain, adjust, compromise, settle, determine, and
20 allow any tort claim. If any tort claim is compromised, settled,
21 or allowed in an amount of more than five thousand dollars, the
22 unanimous approval of all members of the State Claims Board shall
23 be required. If any tort claim is compromised, settled, or allowed
24 in an amount of more than twenty-five thousand dollars, the claim
25 shall also be submitted for approval by the district court. ~~for~~

1 ~~Lancaster County~~. When approval of the district court is required,
2 the Attorney General shall make application for such approval and
3 shall file with the application a complete record of the action
4 of the State Claims Board on such claim. The claimant may join
5 in such application, and if the claimant does so, the court may
6 proceed to act on the application without further notice to either
7 party. If the claimant does not join in the application, the court
8 shall require actual notice to all parties before acting on the
9 application. The court may deny the application for any legal and
10 sufficient reason or may direct the State Claims Board to conduct
11 further hearings on any material issues. The fees of the clerk
12 of the district court for filing, docketing, and indexing such
13 application shall be five dollars.

14 Sec. 98. Section 81-8,214, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-8,214 The district court, sitting without a jury,
17 shall have exclusive jurisdiction to hear, determine, and render
18 judgment on any suit or tort claim. Suits shall be brought in
19 the district court of the county in which the act or omission
20 complained of occurred or, if the act or omission occurred outside
21 the boundaries of the State of Nebraska, in the district court ~~for~~
22 ~~Lancaster County~~. having jurisdiction.

23 Sec. 99. Section 81-8,305, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-8,305 (1) If agreed to by the claimant and the

1 contracting agency, the State Claims Board shall have the authority
2 to consider, ascertain, adjust, compromise, settle, determine,
3 or allow any contract claim. Upon receipt of a contract claim,
4 the Risk Manager shall immediately notify the claimant and the
5 contracting agency of the option of having the dispute submitted to
6 the State Claims Board.

7 (2) If the claimant and the contracting agency agree
8 to submit the dispute to the State Claims Board as provided in
9 subsection (1) of this section, the board shall resolve such
10 dispute in the manner provided under the State Miscellaneous Claims
11 Act. For claims submitted to the board under this subsection, the
12 contracting agency shall provide the board with all documents and
13 information relating to the claim which the contracting agency
14 obtained during its investigation.

15 (3) If either the claimant or the contracting agency
16 objects in writing to submission of the dispute to the State Claims
17 Board within ninety days of mailing of the notice required in
18 subsection (1) of this section, the board shall have no further
19 jurisdiction over the claim and the claimant may initiate an action
20 in the district court of Lancaster County.

21 Sec. 100. Section 83-1223, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 83-1223 The hearing officer shall have the power by
24 subpoena to compel the appearance of witnesses and the production
25 of any relevant evidence. Any witness compelled to attend or

1 produce evidence shall be entitled to the fees and expenses allowed
2 in district court. Any failure to respond to such subpoena shall
3 be certified by the hearing officer to the district court ~~of~~
4 ~~Lancaster County~~ for enforcement or for punishment for contempt of
5 ~~the district~~ court.

6 Sec. 101. Section 83-1224, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 83-1224 (1) Any party aggrieved by the findings,
9 conclusions, or final decision and order of the hearing officer
10 shall be entitled to judicial review under this section. Any party
11 of record also may seek enforcement of the final decision and order
12 of the hearing officer pursuant to this section.

13 (2) Proceedings for judicial review shall be instituted
14 by filing a petition in the district court ~~of Lancaster County~~
15 within thirty days after service of the final decision and order
16 on the party seeking such review. All parties of record shall be
17 made parties to the proceedings. The court, in its discretion, may
18 permit other interested parties to intervene.

19 (3) The filing of a petition for judicial review to ~~such~~
20 the district court shall operate to stay the enforcement of the
21 final decision and order of the hearing officer. While judicial
22 proceedings are pending in district court and unless the parties
23 otherwise agree, the person with developmental disabilities shall
24 remain in his or her current placement. If the health or safety
25 of the person with developmental disabilities or of other persons

1 would be endangered by delaying a change in placement, the service
2 provider may make such change without prejudice to the rights of
3 any party.

4 (4) Within thirty days after receiving notification that
5 a petition for judicial review has been filed or, if good cause
6 is shown, within such further time as the court may allow, the
7 department shall prepare and transmit to the court a certified
8 transcript of the proceedings before the hearing officer.

9 (5) Judicial review shall be heard de novo on the
10 record. The court shall receive the records of the administrative
11 proceedings, base its decision on the preponderance of the
12 evidence, and grant such relief as the court determines is
13 appropriate. The district court may affirm, reverse, or modify
14 the decision of the hearing officer, or remand the case to the
15 hearing officer for further proceedings, including the receipt of
16 additional evidence, for good cause shown.

17 (6) An aggrieved party may secure a review of any final
18 judgment of the district court under this section by appeal to the
19 Court of Appeals. Such appeal shall be taken in the manner provided
20 by law for appeals in civil cases and shall be heard de novo on the
21 record.

22 (7) When no petition for judicial review or other civil
23 action is filed within thirty days after service of the final
24 decision and order on all of the parties, the hearing officer's
25 final decision and order shall become effective. Proceedings for

1 enforcement of a hearing officer's final decision and order shall
2 be instituted by filing a petition for appropriate relief in the
3 district court of ~~Lancaster County~~ within one year after the date
4 of the hearing officer's final decision and order.

5 Sec. 102. Section 84-213, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 84-213 Whenever the Attorney General undertakes any
8 investigation contemplated by section 59-828, 84-211, or 84-212,
9 he or she shall have the authority, prior to commencement of any
10 action, to subpoena witnesses, compel their attendance, examine
11 them under oath, or require the production of any books, documents,
12 records, writings, or tangible things referred to in this section
13 as documentary material, which he or she deems relevant or material
14 to the investigation, for inspection, reproducing, or copying under
15 such terms and conditions as are set forth in this section. Any
16 subpoena issued by the Attorney General shall contain the following
17 information: (1) The section of the statutes the alleged violation
18 of which is under investigation and the general subject matter
19 of the investigation; (2) the date and place at which time the
20 person is required to appear or produce documentary material in
21 his or her possession, custody, or control, which date shall not
22 be less than ten days from the date of service of the subpoena;
23 and (3) a description of any documentary material required by
24 class so as to clearly indicate the material demanded. He or she
25 may require the production of documentary material prior to the

1 taking of any testimony of the person subpoenaed, in which event
2 the documentary material shall be made available for inspection
3 and copying during normal business hours at the principal place of
4 business of the person served or at such other time and place as
5 may be agreed upon by the person served and the Attorney General.
6 When documentary material is demanded by subpoena, the subpoena
7 shall not contain any requirement which would be unreasonable or
8 improper if contained in a subpoena duces tecum issued by a court
9 of this state or require the disclosure of any documentary material
10 which would be privileged or which for any other reason would
11 not be required by a subpoena duces tecum issued by a court of
12 this state. Service of such subpoena shall be in the same manner
13 as subpoenas issued by a court in this state, and service on a
14 corporation may be made on its resident agent. The examination
15 of all witnesses under this section shall be conducted by the
16 Attorney General or by an assistant or special assistant attorney
17 general designated by him or her in writing, and the testimony
18 shall be taken stenographically or by a sound-recording device and
19 shall be transcribed. All persons served with a subpoena by the
20 Attorney General under sections 59-828 and 84-211 to 84-214 shall
21 be paid the same fees as paid witnesses in the courts of this state
22 and mileage as provided in section 81-1176 for state employees,
23 which shall be paid the same as other requests for payment or
24 reimbursement from the state at the time such person appears in
25 response to the subpoena. If a witness served with a subpoena

1 under such sections fails or refuses to obey the same or produce
2 documentary material as required or to give testimony relevant or
3 material to the investigation being conducted, the Attorney General
4 may petition the district court of ~~Lancaster County~~ or the county
5 in which the witness resides for an order requiring the witness to
6 attend and testify or produce the documentary material demanded.
7 Any failure or refusal on the part of the witness to obey such
8 an order of court may be punishable by the court as a contempt
9 thereof. In any investigation brought by the Attorney General
10 pursuant to section 59-828, 84-211, or 84-212, no individual shall
11 be excused from attending, testifying, or producing documentary
12 material, objects, or tangible things in obedience to a subpoena
13 or under order of the court on the ground that the testimony or
14 evidence required of him or her may tend to incriminate him or her
15 or subject him or her to any criminal penalty for or on account of
16 any testimony given by him or her in any investigation brought by
17 the Attorney General pursuant to such sections. No person shall be
18 prosecuted or be subjected to any penalty or forfeiture for or on
19 account of any transaction, matter, or thing concerning which he
20 or she may testify or produce evidence, documentary or otherwise,
21 in any proceeding, suit, or prosecution under such sections, and
22 no individual so testifying shall be exempt from prosecution or
23 punishment for perjury committed in so testifying.

24 Sec. 103. Section 84-911, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 84-911 (1) The validity of any rule or regulation
2 may be determined upon a petition for a declaratory judgment
3 thereon addressed to the district court ~~of Lancaster County~~ if it
4 appears that the rule or regulation or its threatened application
5 interferes with or impairs or threatens to interfere with or impair
6 the legal rights or privileges of the petitioner. The agency shall
7 be made a party to the proceeding. The declaratory judgment may
8 be rendered whether or not the petitioner has first requested the
9 agency to pass upon the validity of the rule or regulation in
10 question.

11 (2) The court shall declare the rule or regulation
12 invalid if it finds that it violates constitutional provisions,
13 exceeds the statutory authority of the agency, or was adopted
14 without compliance with the statutory procedures. For purposes of
15 this subsection, statutory procedures shall not include procedures
16 provided under the Negotiated Rulemaking Act.

17 Sec. 104. Section 85-1418, Revised Statutes Supplement,
18 2007, is amended to read:

19 85-1418 (1) No state warrant shall be issued by the
20 Department of Administrative Services or used by any public
21 institution for the purpose of funding any program or capital
22 construction project which has not been approved or which has
23 been disapproved by the commission pursuant to the Coordinating
24 Commission for Postsecondary Education Act. If state funding for
25 any such program or project cannot be or is not divided into

1 warrants separate from other programs or projects, the department
2 shall reduce a warrant to the public institution which includes
3 funding for the program or project by the amount of tax funds
4 designated by the Legislature which are budgeted in that fiscal
5 year by the public institution for use for the program or project.

6 (2) The department may reduce the amount of state aid
7 distributed to a community college area pursuant to the Community
8 College Foundation and Equalization Aid Act by the amount of funds
9 used by the area to provide a program or capital construction
10 project which has not been approved or which has been disapproved
11 by the commission.

12 (3) The district court ~~of Lancaster County~~ shall have
13 jurisdiction to enforce an order or decision of the commission
14 entered pursuant to the Coordinating Commission for Postsecondary
15 Education Act and to enforce this section.

16 (4) Any person or public institution aggrieved by a
17 final order of the commission entered pursuant to section 85-1413,
18 85-1414, 85-1415, or 85-1416 shall be entitled to judicial review
19 of the order. Proceedings for review shall be instituted by filing
20 a petition in the district court ~~of Lancaster County~~ within thirty
21 days after public notice of the final decision by the commission
22 is given. The filing of the petition or the service of summons
23 upon the commission shall not stay enforcement of such order. The
24 review shall be conducted by the court without a jury on the
25 record of the commission. The court shall have jurisdiction to

1 enjoin enforcement of any order of the commission which is (a)
2 in violation of constitutional provisions, (b) in excess of the
3 constitutional or statutory authority of the commission, (c) made
4 upon unlawful procedure, or (d) affected by other error of law.

5 (5) A party may secure a review of any final judgment of
6 the district court by appeal to the Court of Appeals. Such appeal
7 shall be taken in the manner provided by law for appeals in civil
8 cases and shall be heard de novo on the record.

9 Sec. 105. Section 87-142, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 87-142 (1) Actions to require cancellation of a mark
12 registered pursuant to the Trademark Registration Act or in
13 mandamus to compel registration of a mark pursuant to the act
14 shall be brought in the district court, ~~of Lancaster County~~. In
15 an action in mandamus, the proceeding shall be based solely upon
16 the record before the secretary. In an action for cancellation, the
17 secretary shall not be made a party to the proceeding but shall be
18 notified of the filing of the complaint by the clerk of the court
19 in which it is filed and shall be given the right to intervene in
20 the action.

21 (2) In any action brought against a nonresident
22 registrant, service may be effected upon the secretary as agent
23 for service of the registrant in accordance with the procedures
24 established for service upon nonresident corporations and business
25 entities under section 25-509.01.

1 Sec. 106. Section 87-219.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 87-219.01 (1) Within sixty days after the publication of
4 a new registered trade name as provided in section 87-219, a person
5 holding a valid registration of a trade name, corporate name, or
6 limited liability company name may protest the registration of the
7 new trade name. The protest shall be submitted in writing to the
8 Secretary of State. The Secretary of State shall forward a copy of
9 the written complaint to the new registrant who shall have thirty
10 days to respond to the complaint in writing. If, upon review of the
11 complaint and the response to the complaint, the Secretary of State
12 finds that the new registered trade name violates any provision
13 of section 87-209, the Secretary of State shall cancel such trade
14 name. Unless the dispute over the registration of the new trade
15 name is otherwise resolved or settled by the parties, the Secretary
16 of State shall make his or her finding within fifteen days after
17 the response by the new registrant.

18 (2) The Secretary of State's decision may be appealed
19 to the district court of ~~Lancaster County~~ within thirty days
20 after notice of the decision is received by the appealing party.
21 The appeal shall be commenced by petitioning the district court
22 to compel the Secretary of State to cancel or reinstate such
23 trade name, and attached to the petition shall be copies of the
24 original filing for the trade name, proof of publication, the
25 complaint, the response to the complaint, if any, and the Secretary

1 of State's finding. The district court may summarily order the
2 Secretary of State to cancel or reinstate such trade name or take
3 any other action the district court considers appropriate. The
4 district court's final decision may be appealed as in other civil
5 proceedings.

6 Sec. 107. This act becomes operative on January 1, 2009.

7 Sec. 108. Original sections 8-1,134, 8-1725, 8-1736,
8 9-817, 9-821, 9-832, 12-1119, 21-315, 21-317, 21-323.02, 21-325.02,
9 21-1909, 21-19,140, 21-19,142, 21-19,160, 21-2009, 21-20,161,
10 21-20,163, 21-20,181, 21-2215, 29-3528, 37-708.01, 44-1528,
11 44-2140, 44-2141, 44-2142, 44-2151, 44-2707, 44-32,166, 44-4804,
12 44-4809, 44-4810, 44-4812, 44-4813, 44-4816, 44-4817, 44-4828,
13 44-4831, 44-4833, 44-4847, 44-4849, 44-4850, 44-4851, 44-4852,
14 44-4853, 44-6023, 44-6111, 44-6115, 44-6115.01, 44-6115.02,
15 44-6121, 44-6131, 44-6141, 45-191.08, 45-921, 45-924, 48-638,
16 48-813, 54-1914, 59-1611, 59-1725, 67-441, 69-306, 69-2116,
17 69-2710, 70-604.05, 70-1019, 75-140, 75-158, 75-369.04, 75-369.06,
18 75-1012, 76-1315, 76-2118, 76-2119, 77-915, 77-2798, 79-1166,
19 81-8,214, 81-8,305, 83-1223, 84-213, 84-911, and 87-219.01,
20 Reissue Revised Statutes of Nebraska, sections 8-1016, 8-1017,
21 9-701, 13-2042, 23-2522, 25-21,206, 25-21,264, 45-717, 45-717.02,
22 66-1529.02, 75-156, 77-27,127, 77-5726, 81-8,211, 83-1224, and
23 87-142, Revised Statutes Cumulative Supplement, 2006, and sections
24 28-738, 44-8216, 71-2408, 76-2223, 77-5011, and 85-1418, Revised
25 Statutes Supplement, 2007, are repealed.

LB 828

LB 828

1 Sec. 109. The following section is outright repealed:

2 Section 8-1,135, Reissue Revised Statutes of Nebraska.