

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 72

Introduced by Pahls, 31.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-3,143,
 2 44-402.01, 44-710.03, 44-710.04, 44-1540, 44-4803, and
 3 44-4862, Reissue Revised Statutes of Nebraska; to change
 4 provisions relating to unfair claims settlement
 5 practices, life insurance reserves, and sickness and
 6 accident insurance policy provisions; to provide
 7 requirements and define terms under the Nebraska Insurers
 8 Supervision, Rehabilitation, and Liquidation Act; to
 9 harmonize provisions; and to repeal the original
 10 sections.

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

1 Section 1. Section 44-3,143, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-3,143 (1) Any insurance company authorized to do
4 business in this state shall pay interest on any proceeds due on a
5 life insurance policy if:

6 ~~(1)~~ (a) The insured was a resident of this state on the
7 date of death;

8 ~~(2)~~ (b) The date of death was on or after June 6, 1991;

9 ~~(3)~~ (c) The beneficiary elects in writing to receive the
10 proceeds in a lump-sum payment; and

11 ~~(4)~~ (d) The proceeds are not paid to the beneficiary
12 within thirty days of receipt of proof of death of the insured by the
13 insurance company.

14 (2) Interest shall accrue from the date of receipt of
15 proof of death to the date of payment at the rate calculated pursuant
16 to section 45-103 in effect on January 1 of the calendar year in
17 which occurs the date of receipt of proof of death. For purposes of
18 this section, date of payment shall include the date of the postmark
19 stamped on an envelope, properly addressed and postage prepaid,
20 containing the payment.

21 (3) If an action is commenced to recover the proceeds,
22 this section shall not require the payment of interest for any period
23 of time for which interest is awarded pursuant to sections 45-103 to
24 45-103.04.

25 (4) A violation of this section shall be an unfair claims

1 settlement practice subject to the Unfair Insurance Claims Settlement
2 Practices Act.

3 Sec. 2. Section 44-402.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-402.01 Any domestic life insurance company, including,
6 for the purposes of sections 44-402.01 to 44-402.05, all domestic
7 fraternal benefit societies which operate on a legal reserve basis,
8 may, after adoption of a resolution by its board of directors and
9 ~~certification thereof to~~ upon approval of the Director of Insurance,
10 establish one or more separate accounts and may allocate thereto
11 amounts, including without limitation proceeds applied under optional
12 modes of settlement or under dividend options, to provide for life
13 insurance and benefits incidental thereto, payable in fixed or
14 variable amounts or both, and may, upon approval of the director,
15 guarantee the value of the assets allocated to a separate account.

16 Sec. 3. Section 44-710.03, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-710.03 Except as provided in section 44-710.05, each
19 policy of sickness and accident insurance delivered or issued for
20 delivery to any person in this state shall contain the provisions
21 specified in this section in the words in which the ~~same provisions~~
22 appear in this section, except that the insurer may, at its option,
23 substitute for one or more of such provisions corresponding
24 provisions of different wording approved by the Director of Insurance
25 which are in each instance not less favorable in any respect to the

1 insured or the beneficiary. Such provisions shall be preceded
2 individually by the caption appearing in this section or, at the
3 option of the insurer, by such appropriate individual or group
4 captions or subcaptions as the Director of Insurance may approve.

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

12 (2) A provision as follows: TIME LIMIT ON CERTAIN
13 DEFENSES: (a) After two years from the date of issue of this policy
14 no misstatements, except fraudulent misstatements, made by the
15 applicant in the application for such policy shall be used to void
16 the policy or to deny a claim for loss incurred or disability, as
17 defined in the policy, commencing after the expiration of such two-
18 year period. The foregoing policy provision shall not be so construed
19 as to affect any legal requirement for avoidance of a policy or
20 denial of a claim during such initial two-year period nor to limit
21 the application of subdivisions (1) through (5) of section 44-710.04
22 in the event of misstatement with respect to age or occupation or
23 other insurance. A policy which the insured has the right to continue
24 in force subject to its terms by the timely payment of premium until
25 at least age fifty or, in the case of a policy issued after age

1 forty-four, for at least five years from its date of issue, may
2 contain in lieu of the foregoing the following provision, from which
3 the clause "as defined in the policy" may be omitted at the insurer's
4 option, under the caption INCONTESTABLE: After this policy has been
5 in force for a period of two years during the lifetime of the
6 insured, excluding any period during which the insured is disabled,
7 it shall become incontestable as to the statements contained in the
8 application. (b) No claim for loss incurred or disability, as defined
9 in the policy, commencing after two years from the date of issue of
10 this policy shall be reduced or denied on the ground that disease or
11 physical condition not excluded from coverage by name or specific
12 description effective on the date of loss had existed prior to the
13 effective date of coverage of this policy.

14 (3) A provision as follows: GRACE PERIOD: A grace period
15 of (insert a number not less than 7 for weekly premium
16 policies, 10 for monthly premium policies, and 31 for all other
17 policies) days will be granted for the payment of each premium
18 falling due after the first premium, during which grace period the
19 policy shall continue in force. A policy which contains a
20 cancellation provision may add, at the end of the above provision:
21 Subject to the right of the insurer to cancel in accordance with the
22 cancellation provision hereof. A policy in which the insurer reserves
23 the right to refuse any renewal shall have, at the beginning of the
24 above provision: Unless not less than thirty days prior to the
25 premium due date the insurer has delivered to the insured or has

1 mailed to his or her last address as shown by the records of the
2 insurer written notice of its intention not to renew this policy
3 beyond the period for which the premium has been accepted.

4 (4) A provision as follows: REINSTATEMENT: If any renewal
5 premium be not paid within the time granted the insured for payment,
6 a subsequent acceptance of premium by the insurer or by any agent
7 duly authorized by the insurer to accept such premium, without
8 requiring in connection therewith an application for reinstatement,
9 shall reinstate the policy, except that if the insurer or such agent
10 requires an application for reinstatement and issues a conditional
11 receipt for the premium tendered, the policy will be reinstated upon
12 approval of such application by the insurer or, lacking such
13 approval, upon the forty-fifth day following the date of such
14 conditional receipt unless the insurer has previously notified the
15 insured in writing of its disapproval of such application. The
16 reinstated policy shall cover only loss resulting from such
17 accidental injury as may be sustained after the date of reinstatement
18 and loss due to such sickness as may begin more than ten days after
19 such date. In all other respects the insured and insurer shall have
20 the same rights thereunder as they had under the policy immediately
21 before the due date of the defaulted premium, subject to any
22 provisions endorsed hereon or attached hereto in connection with the
23 reinstatement. Any premium accepted in connection with a
24 reinstatement shall be applied to a period for which premium has not
25 been previously paid but not to any period more than sixty days prior

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

7 (5) A provision as follows: NOTICE OF CLAIM: Written
8 notice of claim must be given to the insurer within twenty days after
9 the occurrence or commencement of any loss covered by the policy or
10 as soon thereafter as is reasonably possible. Notice given by or on
11 behalf of the insured or the beneficiary to the insurer
12 at (insert the location of such office as the insurer may
13 designate for the purpose), or to any authorized agent of the
14 insurer, with information sufficient to identify the insured, shall
15 be deemed notice to the insurer. In a policy providing a loss-of-time
16 benefit which may be payable for at least two years, an insurer may
17 at its option insert the following between the first and second
18 sentences of the above provision: Subject to the qualifications set
19 forth below, if the insured suffers loss of time on account of
20 disability for which indemnity may be payable for at least two years,
21 he or she shall, at least once in every six months after having given
22 notice of claim, give to the insurer notice of continuance of such
23 disability, except in the event of legal incapacity. The period of
24 six months following any filing of proof by the insured or any
25 payment by the insurer on account of such claim or any denial of

1 liability in whole or in part by the insurer shall be excluded in
2 applying this provision. Delay in the giving of such notice shall not
3 impair the insured's right to any indemnity which would otherwise
4 have accrued during the period of six months preceding the date on
5 which such notice is actually given.

6 (6) A provision as follows: CLAIM FORMS: The insurer,
7 upon receipt of a notice of claim, will furnish to the claimant such
8 forms as are usually furnished by it for filing proofs of loss. If
9 such forms are not furnished within fifteen days after the giving of
10 such notice, the claimant shall be deemed to have complied with the
11 requirements of this policy as to proof of loss upon submitting,
12 within the time fixed in the policy for filing proofs of loss,
13 written proof covering the occurrence, the character, and the extent
14 of the loss for which claim is made.

15 (7) A provision as follows: PROOFS OF LOSS: Written proof
16 of loss must be furnished to the insurer at its office in case of
17 claim for loss for which the policy provides any periodic payment
18 contingent upon continuing loss within ninety days after the
19 termination of the period for which the insurer is liable and in case
20 of claim for any other loss within ninety days after the date of such
21 loss. Failure to furnish such proof within the time required shall
22 not invalidate nor reduce any claim if it was not reasonably possible
23 to give proof within such time and if such proof is furnished as soon
24 as reasonably possible and in no event, except in the absence of
25 legal capacity, later than one year from the time proof is otherwise

1 required.

2 (8) A provision as follows: TIME OF PAYMENT OF CLAIMS:
3 Indemnities payable under this policy for any loss other than loss
4 for which this policy provides any periodic payment will be paid
5 immediately upon receipt of due written proof of such loss. Subject
6 to due written proof of loss, all accrued indemnities for loss for
7 which this policy provides periodic payment will be
8 paid (insert period for payment which must not be
9 less frequently than monthly) and any balance remaining unpaid upon
10 the termination of liability will be paid immediately upon receipt of
11 due written proof.

12 (9) A provision as follows: PAYMENT OF CLAIMS: Indemnity
13 for loss of life will be payable in accordance with the beneficiary
14 designation and the provisions respecting such payment which may be
15 prescribed herein and effective at the time of payment. If no such
16 designation or provision is then effective, such indemnity shall be
17 payable to the estate of the insured. Any other accrued indemnities
18 unpaid at the insured's death may, at the option of the insurer, be
19 paid either to such beneficiary or to such estate. All other
20 indemnities will be payable to the insured. The following provisions,
21 or either of them, may be included with the foregoing provision at
22 the option of the insurer: (a) If any indemnity of this policy shall
23 be payable to the estate of the insured, or to an insured or
24 beneficiary who is a minor or otherwise not competent to give a valid
25 release, the insurer may pay such indemnity, up to an amount not

1 exceeding \$..... (insert an amount which shall not exceed five
2 thousand dollars), to any relative by blood or connection by marriage
3 of the insured or beneficiary who is deemed by the insurer to be
4 equitably entitled thereto. Any payment made by the insurer in good
5 faith pursuant to this provision shall fully discharge the insurer to
6 the extent of such payment. (b) Subject to any written direction of
7 the insured in the application or otherwise all or a portion of any
8 indemnities provided by this policy on account of hospital, nursing,
9 medical, or surgical services may, at the insurer's option and unless
10 the insured requests otherwise in writing not later than the time of
11 filing proofs of such loss, be paid directly to the hospital or
12 person rendering such services; but it is not required that the
13 service be rendered by a particular hospital or person.

14 (10) A provision as follows: PHYSICAL EXAMINATIONS AND
15 AUTOPSY: The insurer at its own expense shall have the right and
16 opportunity to examine the person of the insured when and as often as
17 it may reasonably require during the pendency of a claim hereunder
18 and to make an autopsy in case of death where it is not forbidden by
19 law.

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

1 (12) A provision as follows: CHANGE OF BENEFICIARY:
2 Unless the insured makes an irrevocable designation of beneficiary,
3 the right to change of beneficiary is reserved to the insured and the
4 consent of the beneficiary or beneficiaries shall not be requisite to
5 surrender or assignment of this policy, to any change of beneficiary
6 or beneficiaries, or to any other changes in this policy. The first
7 clause of this provision, relating to the irrevocable designation of
8 beneficiary, may be omitted at the insurer's option.

9 (13) A provision as follows: CONFORMITY WITH STATE AND
10 FEDERAL LAW: Any provision of this policy which, on its effective
11 date, is in conflict with the law of the federal government or the
12 state in which the insured resides on such date is hereby amended to
13 conform to the minimum requirements of such law.

14 Sec. 4. Section 44-710.04, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-710.04 Except as provided in sections 44-710.05 and
17 44-787, no policy of sickness and accident insurance delivered or
18 issued for delivery to any person in this state shall contain
19 provisions respecting the matters set forth below unless such
20 provisions are in the words in which the ~~same~~ provisions appear in
21 this section, except that the insurer may, at its option, use in lieu
22 of any such provision a corresponding provision of different wording
23 approved by the Director of Insurance which is not less favorable in
24 any respect to the insured or the beneficiary. Any such provision
25 contained in the policy shall be preceded individually by the

1 appropriate caption appearing in this section or, at the option of
2 the insurer, by such appropriate individual or group captions or
3 subcaptions as the Director of Insurance may approve.

4 (1) A provision as follows: CHANGE OF OCCUPATION: If the
5 insured be injured or contract sickness after having changed his or
6 her occupation to one classified by the insurer as more hazardous
7 than that stated in this policy or while doing for compensation
8 anything pertaining to an occupation so classified, the insurer will
9 pay only such portion of the indemnities provided in this policy as
10 the premium paid would have purchased at the rates and within the
11 limits fixed by the insurer for such more hazardous occupation. If
12 the insured changes his or her occupation to one classified by the
13 insurer as less hazardous than that stated in this policy, the
14 insurer, upon receipt of proof of such change of occupation, will
15 reduce the premium rate accordingly and will return the excess pro
16 rata unearned premium from the date of change of occupation or from
17 the policy anniversary date immediately preceding receipt of such
18 proof, whichever is the more recent. In applying this provision, the
19 classification of occupational risk and the premium rates shall be
20 such as have been last filed by the insurer prior to the occurrence
21 of the loss for which the insurer is liable or prior to date of proof
22 of change in occupation with the state official having supervision of
23 insurance in the state where the insured resided at the time this
24 policy was issued; but if such filing was not required, then the
25 classification of occupational risk and the premium rates shall be

1 those last made effective by the insurer in such state prior to the
2 occurrence of the loss or prior to the date of proof of change of
3 occupation.

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

8 (3) A provision as follows: OTHER INSURANCE IN THIS
9 INSURER: If an accident or sickness or accident and sickness policy
10 or policies previously issued by the insurer to the insured be in
11 force concurrently herewith, making the aggregate indemnity
12 for (insert type of coverage or coverages) in excess
13 of \$..... (insert maximum limit of indemnity or
14 indemnities), the excess insurance shall be void and all premiums
15 paid for such excess shall be returned to the insured or to his or
16 her estate; or in lieu thereof: Insurance effective at any one time
17 on the insured under a like policy or policies in this insurer is
18 limited to the one such policy elected by the insured, his or her
19 beneficiary, or his or her estate, as the case may be, and the
20 insurer will return all premiums paid for all other such policies.

21 (4) A provision as follows: INSURANCE WITH OTHER
22 INSURERS: If there be other valid coverage, not with this insurer,
23 providing benefits for the same loss on a provision-of-service basis
24 or on an expense-incurred basis and of which this insurer has not
25 been given written notice prior to the occurrence or commencement of

1 loss, the only liability under any expense-incurred coverage of this
2 policy shall be for such proportion of the loss as the amount which
3 would otherwise have been payable hereunder plus the total of the
4 like amounts under all such other valid coverages for the same loss
5 of which this insurer had notice bears to the total like amounts
6 under all valid coverages for such loss and for the return of such
7 portion of the premiums paid as shall exceed the pro rata portion for
8 the amount so determined. For the purpose of applying this provision
9 when other coverage is on a provision-of-service basis, the like
10 amount of such other coverage shall be taken as the amount which the
11 services rendered would have cost in the absence of such coverage. If
12 the foregoing policy provision is included in a policy which also
13 contains the next following policy provision there shall be added to
14 the caption of the foregoing provision the phrase EXPENSE-
15 INCURRED BENEFITS. The insurer may, at its option, include in this
16 provision a definition of other valid coverage, approved as to form
17 by the Director of Insurance, which definition shall be limited in
18 subject matter to coverage provided by organizations subject to
19 regulation by insurance law or by insurance authorities of this or
20 any other state of the United States or any province of Canada and by
21 hospital or medical service organizations and to any other coverage
22 the inclusion of which may be approved by the Director of Insurance.
23 In the absence of such definition such term shall not include group
24 insurance, automobile medical payments insurance, or coverage
25 provided by hospital or medical service organizations or by union

1 welfare plans or employer or employee benefit organizations. For the
2 purpose of applying the foregoing policy provision with respect to
3 any insured, any amount of benefit provided for such insured pursuant
4 to any compulsory benefit statute, including any workers'
5 compensation or employers liability statute, whether provided by a
6 governmental agency or otherwise shall in all cases be deemed to be
7 other valid coverage of which the insurer has had notice. In applying
8 the foregoing policy provision no third-party liability coverage
9 shall be included as other valid coverage.

10 (5) A provision as follows: INSURANCE WITH OTHER
11 INSURERS: If there be other valid coverage, not with this insurer,
12 providing benefits for the same loss on other than an expense-
13 incurred basis and of which this insurer has not been given written
14 notice prior to the occurrence or commencement of loss, the only
15 liability for such benefits under this policy shall be for such
16 proportion of the indemnities otherwise provided hereunder for such
17 loss as the like indemnities of which the insurer had notice
18 (including the indemnities under this policy) bear to the total
19 amount of all like indemnities for such loss, and for the return of
20 such portion of the premium paid as shall exceed the pro rata portion
21 for the indemnities thus determined. If the foregoing policy
22 provision is included in a policy which also contains the next
23 preceding policy provision, there shall be added to the caption of
24 the foregoing provision the phrase OTHER BENEFITS. The insurer
25 may, at its option, include in this provision a definition of other

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

18 (6) A provision as follows: RELATION OF EARNINGS TO
19 INSURANCE: If the total monthly amount of loss-of-time benefits
20 promised for the same loss under all valid loss-of-time coverage upon
21 the insured, whether payable on a weekly or monthly basis, shall
22 exceed the monthly earnings of the insured at the time disability
23 commenced or his or her average monthly earnings for the period of
24 two years immediately preceding a disability for which claim is made,
25 whichever is the greater, the insurer will be liable only for such

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

1 include any coverage provided for such insured pursuant to any
2 compulsory benefit statute, including any workers' compensation or
3 employers liability statute, or benefits provided by union welfare
4 plans or by employer or employee benefit organizations.

5 (7) A provision as follows: UNPAID PREMIUM: Upon the
6 payment of a claim under this policy, any premium then due and unpaid
7 or covered by any note or written order may be deducted therefrom.

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

1 promptly the unearned portion of any premium paid. If the insured
2 cancels, the earned premium shall be computed by the use of the
3 short-rate table last filed with the state official having
4 supervision of insurance in the state where the insured resided when
5 the policy was issued. If the insurer cancels, the earned premium
6 shall be computed pro rata. Cancellation shall be without prejudice
7 to any claim originating prior to the effective date of cancellation.

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

13 ~~(10)~~(9) A provision as follows: ILLEGAL OCCUPATION: The
14 insurer shall not be liable for any loss to which a contributing
15 cause was the insured's commission of or attempt to commit a felony
16 or to which a contributing cause was the insured's being engaged in
17 an illegal occupation.

18 ~~(11)~~(10) A provision as follows: INTOXICANTS AND
19 NARCOTICS: The insurer shall not be liable for any loss sustained or
20 contracted in consequence of the insured's being intoxicated or under
21 the influence of any narcotic unless administered on the advice of a
22 physician.

23 Sec. 5. Section 44-1540, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-1540 Any of the following acts or practices by an

1 insurer, if committed in violation of section 44-1539, shall be an
2 unfair claims settlement practice:

3 (1) Knowingly misrepresenting to claimants and insureds
4 relevant facts or policy provisions relating to coverages at issue;

5 (2) Failing to acknowledge with reasonable promptness
6 pertinent communications with respect to claims arising under its
7 policies;

8 (3) Failing to adopt and implement reasonable standards
9 for the prompt investigation and settlement of claims arising under
10 its policies;

11 (4) Not attempting in good faith to effectuate prompt,
12 fair, and equitable settlement of claims submitted in which liability
13 has become reasonably clear;

14 (5) Not attempting in good faith to effectuate prompt,
15 fair, and equitable settlement of property and casualty claims (a) in
16 which coverage and the amount of the loss are reasonably clear and
17 (b) for loss of tangible personal property within real property which
18 is insured by a policy subject to section 44-501.02 and which is
19 wholly destroyed by fire, tornado, windstorm, lightning, or
20 explosion;

21 (6) Compelling insureds or beneficiaries to institute
22 litigation to recover amounts due under its policies by offering
23 substantially less than the amounts ultimately recovered in
24 litigation brought by them;

25 (7) Refusing to pay claims without conducting a

1 reasonable investigation;

2 (8) Failing to affirm or deny coverage of a claim within
3 a reasonable time after having completed its investigation related to
4 such claim;

5 (9) Attempting to settle a claim for less than the amount
6 to which a reasonable person would believe the insured or beneficiary
7 was entitled by reference to written or printed advertising material
8 accompanying or made part of an application;

9 (10) Attempting to settle claims on the basis of an
10 application which was materially altered without notice to or
11 knowledge or consent of the insured;

12 (11) Making a claims payment to an insured or beneficiary
13 without indicating the coverage under which each payment is being
14 made;

15 (12) Unreasonably delaying the investigation or payment
16 of claims by requiring both a formal proof-of-loss form and
17 subsequent verification that would result in duplication of
18 information and verification appearing in the formal proof-of-loss
19 form;

20 (13) Failing, in the case of the denial of a claim or the
21 offer of a compromise settlement, to promptly provide a reasonable
22 and accurate explanation of the basis for such action;

23 (14) Failing to provide forms necessary to present claims
24 with reasonable explanations regarding their use within fifteen
25 working days of a request;

1 (15) Failing to adopt and implement reasonable standards
2 to assure that the repairs of a repairer owned by or affiliated with
3 the insurer are performed in a skillful manner. For purposes of this
4 subdivision, a repairer is affiliated with the insurer if there is a
5 preexisting arrangement, understanding, agreement, or contract
6 between the insurer and repairer for services in connection with
7 claims on policies issued by the insurer;

8 (16) Requiring the insured or claimant to use a
9 particular company or location for motor vehicle repair. Nothing in
10 this subdivision shall prohibit an insurer from entering into
11 discount agreements with companies and locations for motor vehicle
12 repair or otherwise entering into any business arrangements or
13 affiliations which reduce the cost of motor vehicle repair if the
14 insured or claimant has the right to use a particular company or
15 reasonably available location for motor vehicle repair. If the
16 insured or claimant chooses to use a particular company or location
17 other than the one providing the lowest estimate for like kind and
18 quality motor vehicle repair, the insurer shall not be liable for any
19 cost exceeding the lowest estimate. For purposes of this subdivision,
20 motor vehicle repair shall include motor vehicle glass replacement
21 and motor vehicle glass repair; ~~and~~

22 (17) Failing to provide coverage information or
23 coordinate benefits pursuant to section 68-928; and -

24 (18) Failing to pay interest on any proceeds due on a
25 life insurance policy as required by section 44-3,143.

1 Sec. 6. Section 44-4803, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-4803 For purposes of the Nebraska Insurers
4 Supervision, Rehabilitation, and Liquidation Act:

5 (1) Ancillary state ~~shall mean~~ means any state other than
6 a domiciliary state;

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

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

14 (4) Department ~~shall mean~~ means the Department of
15 Insurance;

16 (5) Director ~~shall mean~~ means the Director of Insurance;

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

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

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

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

25 (d) The transaction of matters subsequent to execution of

1 such contracts and arising out of them; or

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

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

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

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

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

17 (9) Foreign country ~~shall mean~~ means any other
18 jurisdiction not in any state;

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

22 (11) Formal delinquency proceeding ~~shall mean~~ means any
23 liquidation or rehabilitation proceeding;

24 (12) General assets ~~shall mean~~ means all property, real,
25 personal, or otherwise not specifically mortgaged, pledged,

1 deposited, or otherwise encumbered for the security or benefit of
2 specified persons or classes of persons. As to specifically
3 encumbered property, general assets ~~shall include~~ includes all such
4 property or its proceeds in excess of the amount necessary to
5 discharge the sum or sums secured thereby. Assets held in trust and
6 on deposit for the security or benefit of all insureds or all
7 insureds and creditors, in more than a single state, ~~shall be~~ are
8 treated as general assets;

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

14 (14) Insolvency or insolvent ~~shall mean~~ means:

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

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

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

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

25 (i) Any capital and surplus required by law to be

1 maintained; or

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

4 (c) For purposes of this subdivision, liabilities ~~shall~~
5 ~~include, includes, but not be~~ is not limited to, reserves required by
6 statute or by rules and regulations adopted and promulgated or
7 specific requirements imposed by the director upon a subject company
8 at the time of admission or subsequent thereto;

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

16 (16) Netting agreement means an agreement and any terms
17 and conditions incorporated by reference therein, including a master
18 agreement that, together with all schedules, confirmations,
19 definitions, and addenda thereto and transactions under any thereof,
20 shall be treated as one netting agreement:

21 (a) That documents one or more transactions between
22 parties to the agreement for or involving one or more qualified
23 financial contracts; and

24 (b) That provides for the netting or liquidation of
25 qualified financial contracts or present or future payment

1 obligations or payment entitlements thereunder, including liquidation
2 or closeout values relating to such obligations or entitlements among
3 the parties to the netting agreement;

4 ~~(16)~~ (17) Person ~~shall include~~ includes any individual,
5 corporation, partnership, limited liability company, association,
6 trust, or other entity;

7 (18) Qualified financial contract means a commodity
8 contract, forward contract, repurchase agreement, securities
9 contract, swap agreement, and any similar agreement that the director
10 determines by rule and regulation, resolution, or order to be a
11 qualified financial contract for the purposes of the act;

12 ~~(17)~~ (19) Receiver ~~shall mean~~ means receiver, liquidator,
13 rehabilitator, or conservator as the context requires;

14 ~~(18)~~ (20) Reciprocal state ~~shall mean~~ means any state
15 other than this state in which in substance and effect sections
16 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in
17 which provisions are in force requiring that the director,
18 commissioner, or equivalent official of such state be the receiver of
19 a delinquent insurer, and in which some provision exists for the
20 avoidance of fraudulent conveyances and preferential transfers;

21 ~~(19)~~ (21) Secured claim ~~shall mean~~ means any claim
22 secured by mortgage, trust deed, pledge, or deposit as security,
23 escrow, or otherwise but ~~shall~~ does not include a special deposit
24 claim or a claim against general assets. The term ~~shall also include~~
25 includes claims which have become liens upon specific assets by

1 reason of judicial process;

2 ~~(20)~~(22) Special deposit claim ~~shall mean~~means any
3 claim secured by a deposit made pursuant to statute for the security
4 or benefit of a limited class or classes of persons but ~~shall~~does
5 not include any claim secured by general assets;

6 ~~(21)~~(23) State ~~shall mean~~means any state, district, or
7 territory of the United States and the Panama Canal Zone; and

8 ~~(22)~~(24) Transfer ~~shall include~~includes the sale of
9 property or an interest therein and every other and different mode,
10 direct or indirect, of disposing of or of parting with property, an
11 interest therein, or the possession thereof or of fixing a lien upon
12 property or an interest therein, absolutely or conditionally,
13 voluntarily, or by or without judicial proceedings. The retention of
14 a security title to property delivered to a debtor ~~shall be~~is deemed
15 a transfer suffered by the debtor.

16 Sec. 7. (1) Notwithstanding any other provision of the
17 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to
18 the contrary, including any other provision of the act that permits
19 the modification of contracts, or another law of this state, a person
20 shall not be stayed or prohibited from exercising any of the
21 following:

22 (a) A contractual right to terminate, liquidate, or close
23 out any netting agreement or qualified financial contract with an
24 insurer because of one of the following:

25 (i) The insolvency, financial condition, or default of

1 the insurer at any time, if the right is enforceable under applicable
2 law other than the act; or

3 (ii) The commencement of a formal delinquency proceeding
4 under the act;

5 (b) Any right under a pledge, security, collateral, or
6 guarantee agreement or any other similar security arrangement or
7 credit support document relating to a netting agreement or qualified
8 financial contract; or

9 (c) Subject to any provision of subsection (2) of section
10 44-4830, any right to setoff or net out any termination value,
11 payment amount, or other transfer obligation arising under or in
12 connection with a netting agreement or qualified financial contract
13 if the counterparty or its guarantor is organized under the laws of
14 the United States or a state or foreign jurisdiction approved by the
15 Securities Valuation Office of the National Association of Insurance
16 Commissioners as eligible for netting.

17 (2) Upon termination of a netting agreement or qualified
18 financial contract, the net or settlement amount, if any, owed by a
19 nondefaulting party to an insurer against which an application or
20 petition has been filed under the act shall be transferred to or on
21 the order of the receiver for the insurer, even if the insurer is the
22 defaulting party, notwithstanding any provision in the netting
23 agreement or qualified financial contract that may provide that the
24 defaulting party is not required to pay any net or settlement amount
25 due to the defaulting party upon termination. Any limited two-way

1 payment provision in a netting agreement or qualified financial
2 contract with an insurer that has defaulted shall be deemed to be a
3 full two-way payment provision as against the defaulting insurer. Any
4 such amount, except to the extent it is subject to one or more
5 secondary liens or encumbrances, shall be a general asset of the
6 insurer.

7 (3) In making any transfer of a netting agreement or
8 qualified financial contract of an insurer subject to a proceeding
9 under the act, the receiver shall do one of the following:

10 (a) Transfer to one party, other than an insurer subject
11 to a proceeding under the act, all netting agreements and qualified
12 financial contracts between a counterparty or any affiliate of the
13 counterparty and the insurer that is the subject of the proceeding,
14 including all of the following:

15 (i) All rights and obligations of each party under each
16 netting agreement and qualified financial contract; and

17 (ii) All property, including any guarantees or credit
18 support documents, securing any claims of each party under each such
19 netting agreement and qualified financial contract; or

20 (b) Transfer none of the netting agreements, qualified
21 financial contracts, rights, obligations, or property referred to in
22 subdivision (a) of this subsection with respect to the counterparty
23 and any affiliate of the counterparty.

24 (4) If a receiver for an insurer makes a transfer of one
25 or more netting agreements or qualified financial contracts, the

1 receiver shall use his or her best efforts to notify any person who
2 is party to the netting agreement or qualified financial contract of
3 the transfer by noon of the receiver's local time on the business day
4 following the transfer. For purposes of this subsection, business day
5 means a day other than a Saturday, Sunday, or any day on which either
6 the New York Stock Exchange or the Federal Reserve Bank of New York
7 is closed.

8 (5) Notwithstanding any other provision of the act to the
9 contrary, a receiver shall not avoid a transfer of money or other
10 property arising under or in connection with a netting agreement or
11 qualified financial contract or any pledge, security, collateral, or
12 guarantee agreement or any other similar security arrangement or
13 credit support document relating to a netting agreement or qualified
14 financial contract that is made before the commencement of a formal
15 delinquency proceeding under the act. However, a transfer may be
16 avoided under section 44-4828 if the transfer was made with actual
17 intent to hinder, delay, or defraud the insurer, a receiver appointed
18 for the insurer, or an existing or future creditor.

19 (6)(a) In exercising any of its powers under the act to
20 disaffirm or repudiate a netting agreement or qualified financial
21 contract, the receiver shall take action with respect to each netting
22 agreement or qualified financial contract and all transactions
23 entered into in connection therewith in its entirety.

24 (b) Notwithstanding any other provision of the act to the
25 contrary, any claim of a counterparty against the estate arising from

1 the receiver's disaffirmance or repudiation of a netting agreement or
2 qualified financial contract that has not been previously affirmed in
3 the liquidation or in the immediately preceding rehabilitation case
4 shall be determined and allowed or disallowed as if the claim had
5 arisen before the date of the filing of the petition for liquidation
6 or, if a rehabilitation proceeding is converted to a liquidation
7 proceeding, as if the claim had arisen before the date of the filing
8 of the petition for rehabilitation. The amount of the claim shall be
9 the actual direct compensatory damages determined as of the date of
10 the disaffirmance or repudiation of the netting agreement or
11 qualified financial contract. For purposes of this subdivision,
12 actual direct compensatory damages does not include punitive or
13 exemplary damages, damages for lost profit or lost opportunity, or
14 damages for pain and suffering, but does include normal and
15 reasonable costs of cover or other reasonable measures of damages
16 utilized in the derivatives market for the contract and agreement
17 claims.

18 (7) For purposes of this section, contractual right
19 includes (a) any right, whether or not evidenced in writing, arising
20 under statutory or common law, (b) a rule or bylaw of a national
21 securities exchange, a national securities clearing organization, or
22 a securities clearing agency, (c) a rule or bylaw or a resolution of
23 the governing body of a contract market or its clearing organization,
24 or (d) under law merchant.

25 (8) This section does not apply to persons who are

1 affiliates of the insurer that is the subject of the proceeding.

2 (9) All rights of a counterparty under the act shall
3 apply to netting agreements and qualified financial contracts entered
4 into on behalf of the general account or separate accounts, if the
5 assets of each separate account are available only to counterparties
6 to netting agreements and qualified financial contracts entered into
7 on behalf of that separate account.

8 Sec. 8. Section 44-4862, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-4862 Sections 44-4801 to 44-4862 and section 7 of this
11 act shall be known and may be cited as the Nebraska Insurers
12 Supervision, Rehabilitation, and Liquidation Act.

13 Sec. 9. Original sections 44-3,143, 44-402.01, 44-710.03,
14 44-710.04, 44-1540, 44-4803, and 44-4862, Reissue Revised Statutes of
15 Nebraska, are repealed.