

LEGISLATIVE BILL 774

Approved by the Governor August 06, 2020

Introduced by Williams, 36.

A BILL FOR AN ACT relating to insurance; to amend sections 44-3520 and 44-3523, Reissue Revised Statutes of Nebraska, and sections 44-416.06, 44-416.09, and 44-3521, Revised Statutes Cumulative Supplement, 2018; to change requirements regarding credit for reinsurance as prescribed; to change provisions relating to fees for dental services; to change provisions relating to motor vehicle service contract reimbursement insurance policies and motor vehicle service contract providers; to prohibit certain activities by facilities as prescribed; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 44-416.06, Revised Statutes Cumulative Supplement, 2018, is amended to read:

44-416.06 (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), (6), ~~or (7),~~ or (8) of this section and any additional requirements contained in rules and regulations adopted and promulgated by the Director of Insurance pursuant to subsection (2) of section 44-416.09 relating to or setting forth (a) the valuation of assets or reserve credits, (b) the amount and form of security supporting reinsurance arrangements, or (c) the circumstances pursuant to which credit will be reduced or eliminated. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (9) ~~(8)~~ of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Director of Insurance as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(a) File with the director evidence of its submission to this state's jurisdiction;

(b) Submit to this state's authority to examine its books and records;

(c) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(d) File annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Demonstrate to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars and its accreditation has not been denied by the director within ninety days after submission of its application.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance

Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars except as provided in subdivision (5)(c)(ii) of this section;

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust; and

(iii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trustee surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the

director pursuant to subdivision (6)(d) of this section;

(ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the director pursuant to rules and regulations;

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director pursuant to rules and regulations;

(iv) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the director as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(v) The assuming insurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis; and

(vi) The assuming insurer must satisfy any other requirements for certification deemed relevant by the director.

(c) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (6)(b) of this section:

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(d)(i) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director as a certified reinsurer.

(ii) In order to determine whether the domiciliary jurisdiction of a non-United-States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United-States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the director.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification in accordance with criteria to be developed under rules and regulations.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The director shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director pursuant to rules and regulations. The director shall publish a list of all certified reinsurers and their ratings.

(f)(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules and regulations adopted and promulgated by the director.

(ii) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director and consistent with the provisions of section 44-416.07 or in a multibeneficiary trust in accordance with subsection (5) of this section, except as otherwise provided in this subsection.

(iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (5) of this section and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (5) of this section. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iv) The minimum trusteed surplus requirements provided in subsection (5) of this section are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trusteed surplus of ten million dollars.

(v) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the director shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)(A) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(B) As used in subdivision (6)(f)(vi)(A) of this section, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(C) If the director continues to assign a higher rating as permitted by other provisions of this section, the requirement in subdivision (6)(f)(vi)(A) of this section does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners-accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(h) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7)(a) Credit shall be allowed when reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below:

(i) Such assuming insurer shall have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. A reciprocal jurisdiction is a jurisdiction that meets one of the following:

(A) A jurisdiction, other than a jurisdiction of the United States, that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a covered agreement is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. 313 and 314, as such sections existed on January 1, 2020, that is currently in effect or in a period of provisional application and that addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(B) A jurisdiction of the United States that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program; or

(C) A qualified jurisdiction as determined by the director pursuant to subdivision (6)(d)(i) of this section that is not otherwise described in subdivision (7)(a)(i)(A) or (B) of this section and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(ii) Such assuming insurer shall have and maintain, on an ongoing basis, the minimum capital and surplus or the equivalent, calculated according to the methodology of its domiciliary jurisdiction, as set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09. If such assuming insurer is an association, including an incorporated or individual unincorporated underwriter, such assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities and calculated according to the methodology of its domiciliary jurisdiction, and a central fund containing a minimum balance as set forth in the rules and regulations adopted and promulgated by the

director pursuant to section 44-416.09;

(iii) Such assuming insurer shall have and maintain, on an ongoing basis, the minimum solvency or capital ratio, as applicable, as set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09. If such assuming insurer is an association, including incorporated and individual unincorporated underwriters, such assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where such assuming insurer has its head office or is domiciled, as applicable, and is also licensed;

(iv) Such assuming insurer shall agree and provide adequate assurance to the director, in a form specified pursuant to rules and regulations adopted and promulgated by the director pursuant to section 44-416.09, as follows:

(A) Such assuming insurer shall provide prompt written notice and explanation to the director if such assuming insurer falls below the minimum requirements set forth in subdivisions (7)(a)(ii) and (iii) of this section or if any regulatory action is taken against such assuming insurer for serious noncompliance with applicable law;

(B) Such assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as the agent for service of process. The director may require that consent for service of process be provided to the director and included in each reinsurance agreement. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(C) Such assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(D) Each reinsurance agreement shall include a provision requiring such assuming insurer to provide security in an amount equal to one hundred percent of such assuming insurer's liabilities attributable to reinsurance ceded pursuant to such agreement if such assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which such judgment was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(E) Such assuming insurer shall confirm that such assuming insurer is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers and agree to notify the ceding insurer and the director and to provide security in an amount equal to one hundred percent of such assuming insurer's liabilities to the ceding insurer if such assuming insurer enters into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subsection (6) of this section and section 44-416.07 and as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(v) Such assuming insurer or its legal successor shall provide, if requested by the director, on behalf of itself and any legal predecessors, certain documentation to the director as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(vi) Such assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09; and

(vii) Such assuming insurer's supervisory authority shall confirm to the director on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that such assuming insurer complies with the requirements set forth in subdivisions (7)(a)(ii) and (iii) of this section.

(b) Nothing in this subsection precludes an assuming insurer from providing the director with information on a voluntary basis.

(c)(i) The director shall timely create and publish a list of reciprocal jurisdictions.

(ii) The director's list shall include any reciprocal jurisdiction as defined under subdivisions (7)(a)(i)(A) and (B) of this section, and the director shall consider including any other reciprocal jurisdiction included on the most current list published through the National Association of Insurance Commissioners' committee process. The director may approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria developed under rules and regulations adopted and promulgated by the director pursuant to section 44-416.09.

(iii) The director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction in accordance with the process set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09, except that the director shall not remove a reciprocal jurisdiction as defined under subdivision (7)(a)(i)(A) or (B) of this section from such list. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in such jurisdiction shall be allowed if otherwise allowed pursuant to sections 44-416.05 to 44-416.10.

(d) The director shall timely create and publish a list of assuming

insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The director may add an assuming insurer to such list if a jurisdiction accredited by the National Association of Insurance Commissioners pursuant to accreditation standards has added such assuming insurer to such jurisdiction's list of assuming insurers or if, upon initial eligibility, such assuming insurer submits the information to the director as required under subdivision (7)(a)(iv) of this section and complies with any additional requirements that the director may impose by rules and regulations adopted and promulgated by the director pursuant to section 44-416.09 except to the extent that any such rules and regulations conflict with an applicable covered agreement.

(e)(i) If the director determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the director may revoke or suspend the eligibility of such assuming insurer for recognition as an assuming insurer under this subsection in accordance with procedures set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09.

(ii) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that such assuming insurer's obligations under the contract are secured in accordance with section 44-416.07.

(iii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by such assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that such assuming insurer's obligations under the contract are secured in a form acceptable to the director and consistent with the provisions of section 44-416.07.

(f) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that such assuming insurer post security for all outstanding ceded liabilities.

(g) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in such reinsurance agreement except as expressly prohibited by sections 44-416.05 to 44-416.10 or other applicable law or rules and regulations.

(h) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the operative date of this section and only with respect to losses incurred and reserves reported on or after the later of the date on which such assuming insurer has met all eligibility requirements pursuant to subdivision (7)(a) of this section or the effective date of such reinsurance agreement, amendment, or renewal.

(i) This subdivision (7)(h) does not alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this subdivision (7)(h) and the reinsurance qualifies for credit under any other applicable provision of sections 44-416.05 to 44-416.10.

(ii) Nothing in this subdivision (7)(h) shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of such agreement.

(iii) Nothing in this subdivision (7)(h) shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate such agreement.

(8) ~~(7)~~ Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), (5), ~~or (6), or (7)~~ of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(9) ~~(8)~~ If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(10) ~~(9)~~ If the assuming insurer does not meet the requirements of subsection (2), (3), ~~or (4)~~, or (7) of this section, the credit permitted by subsection (5) or (6) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount

required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(11)(a) ~~(10)(a)~~ If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.

(b) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing unless:

(i) The reinsurer waives its right to hearing;

(ii) The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (6)(g) of this section; or

(iii) The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 44-416.07. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (6)(f) of this section or section 44-416.07.

(12)(a) ~~(11)(a)~~ A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the director within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Sec. 2. Section 44-416.09, Revised Statutes Cumulative Supplement, 2018, is amended to read:

44-416.09 (1) The director may adopt and promulgate rules and regulations to carry out sections 44-416.05 to 44-416.10.

(2)(a) The director may also adopt and promulgate rules and regulations applicable only to reinsurance arrangements described in subdivision (b) of this subsection.

(b) Any rule or regulation adopted and promulgated pursuant to this subsection shall only apply to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as determined by the director.

(c) Any rule or regulation adopted and promulgated pursuant to subdivision (b)(i) or (b)(ii) of this subsection may apply to any treaty containing (i) policies issued prior to January 1, 2015, if risk pertaining to such policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015, or (ii) policies issued on or after January 1, 2015.

(d) Any rule or regulation adopted and promulgated pursuant to this

subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held, to use the valuation manual prescribed by the director pursuant to section 44-8908.

(e) Any rule or regulation adopted and promulgated pursuant to this subsection shall not apply to a cession to an assuming insurer that:

(i) Meets the conditions set forth in subsection (7) of section 44-416.06;

(ii) (i) Is a certified reinsurer in this state pursuant to subdivision (6)(a) of section 44-416.06; or

(iii) (ii) Maintains at least two hundred fifty million dollars in capital and surplus when determined in accordance with accounting practices and procedures manuals as prescribed by the director in substantial conformity with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and is determined by the director to be:

(A) Licensed to transact insurance or reinsurance in at least twenty-six states; or

(B) Licensed to transact insurance or reinsurance in at least ten states and either licensed to transact insurance or is an accredited reinsurer in a total of at least thirty-five states.

(f) The authority to adopt and promulgate rules and regulations pursuant to this subsection does not limit the director's general authority to adopt rules and regulations pursuant to subsection (1) of this section.

Sec. 3. (1) The Legislature finds and declares that:

(a) Nebraskans who have a plan of health insurance, health benefits, or health care services provided through a health insurer and who receive health care services from a network provider receive such health care services at rates negotiated by the health insurer;

(b) As part of such negotiations, network providers agree to accept set reimbursement from the health insurer for the health care services provided by the network provider;

(c) The person covered by the health insurer is protected by the contract between the health insurer and the network provider from receiving a bill for the balance between the negotiated rate and a billed charge;

(d) Nebraskans need to know the network status of the provider in order to understand the plan of health insurance, health benefits, or health care services applicable to the health care services being provided by the provider; and

(e) It is necessary to regulate communication by providers to avoid communication that may mislead or cause confusion for Nebraskans receiving care from providers about their network status.

(2) For purposes of this section:

(a) Facility means an institution providing health care services or a health care setting, including, but not limited to, a hospital or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory, or imaging center, or any rehabilitation or other therapeutic health setting. Facility does not include a physician's office;

(b) Health insurer means an entity that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a prepaid limited health service organization, a prepaid dental service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services. Health insurer does not include a self-funded employee benefit plan to the extent preempted by federal law or a workers' compensation insurer, risk management pool, or self-insured employer who contracts for services to be provided through a managed care plan certified pursuant to section 48-120.02; and

(c) Network provider means a facility providing services under a plan of health insurance, health benefits, or health care services if the plan either requires a person covered by the health insurer to use, or creates a financial incentive by providing a more favorable deductible, coinsurance, or copayment level for a person covered by the health insurer to use, a health care provider managed, owned, under contract with, or employed by the health insurer which administers the plan.

(3) A facility shall not advertise or hold itself out as a network provider, including any statement that the facility takes or accepts any health insurer, unless the facility is a network provider of the health insurer. A facility that advertises itself as a network provider of a health insurer shall provide a clarifying statement if the facility is not a network provider for all insurance products offered by the health insurer.

(4) Any contract entered into between a facility and a person covered by a health insurer is voidable at the option of the covered person if the facility violates this section.

Sec. 4. (1) For the purposes of this section:

(a) Contracting entity means a person or entity that enters into direct contracts with providers for the delivery of dental services in the ordinary course of business, including a dental carrier or third-party administrator;

(b) Dental carrier means a dental insurance company, a prepaid limited health service organization, or any other entity authorized to offer an insurance plan that provides dental services;

(c) Dental services means services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease. Dental services does not include services delivered by a provider that are billed as

medical services under a health insurance plan;

(d) Provider means an individual or entity that provides dental services or supplies, as defined by the health benefits plan or dental benefits plan, including a dentist or physician, but not a physician organization that leases or rents its network to a third party;

(e) Provider network contract means a contract between a contracting entity and a provider that specifies the rights and responsibilities of the contracting entity and provides for the delivery and payment of dental services to an enrollee; and

(f) Third party means a person or entity that enters into a contract with a contracting entity or with another third party to gain access to the dental services or contractual discounts of a provider network contract. Third party does not include an employer or other group for whom the dental carrier or contracting entity provides administrative services.

(2) A dental insurance plan, contract, or provider network contract with a provider shall not include any restrictions on methods of claim payment for dental services in which the only acceptable payment method is a credit card payment.

(3) A dental carrier may grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided pursuant to a provider network contract if, at the time the provider network contract is entered into or renewed, the dental carrier allows a provider who is part of a dental carrier's provider network to choose not to participate in third-party access to the provider network contract. The third-party access provision of the provider network contract shall be clearly identified. A dental carrier shall not grant a third party access to the provider network contract of any provider who does not participate in third-party access to the provider network contract.

(4) A contracting entity may grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided pursuant to a provider network contract, if the following requirements are met:

(a) The contracting entity identifies all third parties in existence in a list on its Internet web site that is updated at least once every ninety days;

(b) The provider network contract specifically states that the contracting entity may enter into an agreement with a third party that would allow the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity, and when the contracting entity is a dental carrier, the provider chose to participate in third-party access at the time the provider network contract was entered into; and

(c) The third party accessing the provider network contract agrees to comply with all applicable terms of the provider network contract.

(5) A provider is not bound by and is not required to perform dental treatment or services under a provider network contract granted to a third party in violation of this section.

(6) Subsections (3), (4), and (5) of this section shall not apply if any of the following is true:

(a) The provider network contract is for dental services provided to a beneficiary of the federal medicare program pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., or the federal medicaid program pursuant to Title XIX of the federal Social Security Act, 42 U.S.C. 1396 et seq., as such sections existed on January 1, 2020; or

(b) Access to a provider network contract is granted to a dental carrier or an entity operating in accordance with the same brand licensee program as the contracting entity or to an entity that is an affiliate of the contracting entity. A list of the contracting entity's affiliates shall be made available to a provider on the contracting entity's web site.

(7) This section shall take effect on January 1, 2021, and shall apply to all provider network contracts that are delivered, issued for delivery, or executed in this state on or after the operative date of this section.

Sec. 5. Section 44-3520, Reissue Revised Statutes of Nebraska, is amended to read:

44-3520 Sections 44-3520 to 44-3526 and section 8 of this act shall be known and may be cited as the Motor Vehicle Service Contract Reimbursement Insurance Act.

Sec. 6. Section 44-3521, Revised Statutes Cumulative Supplement, 2018, is amended to read:

44-3521 For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Incidental costs means expenses specified in a motor vehicle service contract that are incurred by the service contract holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the motor vehicle service contract or sales agreement or by use of a formula itemizing specific incidental costs incurred by the service contract holder;

(3) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of

a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(4) Motor vehicle means any motor vehicle as defined in section 60-339;

(5)(a) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance.

(b) Motor vehicle service contract also includes a contract or agreement that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle to perform any one or more of the following:

(i) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(ii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) The repair of chips or cracks in or replacement of motor vehicle windshields as a result of damage caused by road hazards;

(iv) The replacement of a motor vehicle key or keyfob in the event the key or keyfob becomes inoperable or is lost;

(v) The payment of specified incidental costs as the result of a failure of a vehicle protection product to perform as specified; and

(vi) Other products and services approved by the director;

(6) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(7) Motor vehicle service contract reimbursement insurance policy means a policy of insurance issued to a motor vehicle service contract provider to either provide reimbursement to the motor vehicle service contract provider under the terms of the insured motor vehicle service contracts issued or sold by the motor vehicle service contract provider or, in the event of the motor vehicle service contract provider's nonperformance, to pay on behalf of the motor vehicle service contract provider all covered contractual obligations incurred by the motor vehicle service contract provider under the terms of the insured motor vehicle service contracts issued or sold by the motor vehicle service contract provider in this state meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider;

(8) Road hazards means hazards that are encountered during normal driving conditions, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(9) Service contract holder means a person who purchases a motor vehicle service contract; and

(10)(a) Vehicle protection product means a vehicle protection device, system, or service that:

(i) Is installed on or applied to a vehicle;

(ii) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(iii) Includes a written warranty.

(b) Vehicle protection product includes, but is not limited to, chemical additives, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

Sec. 7. Section 44-3523, Reissue Revised Statutes of Nebraska, is amended to read:

44-3523 (1) No motor vehicle service contract reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy conspicuously states that the insurer will either reimburse or pay on behalf of the motor vehicle service contract provider any covered all sums which the motor vehicle service contract provider is legally obligated to pay or, in the event of the provider's nonperformance, will provide the service that the provider is legally obligated to perform according to the provider's in the performance of its contractual obligations under the motor vehicle service contracts issued or sold by the provider in this state.

(2) In the event covered service is not provided by the motor vehicle service contract provider within sixty days of proof of loss by the service contract holder, the service contract holder is entitled to apply directly to the insurer providing the motor vehicle service contract reimbursement insurance policy.

(3) ~~(2) The motor vehicle service contract reimbursement insurance policy shall completely and fully reimburse or pay on behalf of the motor vehicle service contract provider for all repair costs incurred under the motor vehicle service contract from the first dollar of coverage. The motor vehicle service contract reimbursement insurance policy shall not require or allow a motor vehicle service contract provider to assume any portion of direct or first-dollar liability for repairs under a motor vehicle service contract. The motor vehicle service contract reimbursement insurance policy shall not include any provision whereby the insurer provides coverage in excess of reserves held by~~

~~the motor vehicle service contract provider or only in the event of the motor vehicle service contract provider's insolvency or default. All unearned premium reserves and claim reserve funds shall be established as liabilities on the books of the insurer in accordance with statutory accounting practices. This subsection shall not apply to programs directly obligating an automobile dealer to perform under the motor vehicle service contract.~~

~~Sec. 8. (1) For purposes of this section, conspicuously means writing, displaying, or presenting a term in such a way that a reasonable person against whom it is to operate shall notice. Conspicuously stated terms include:~~

~~(a) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~

~~(b) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

~~(2) It is the responsibility of the motor vehicle service contract provider issuing the motor vehicle service contract to file a true and correct copy of the motor vehicle service contract form, motor vehicle service contract reimbursement insurance policy, and the notice of filing form with the Department of Insurance. Such notice of filing shall be made on a form provided by the department and must contain the name and address of the business entity filing the form as well as a contact person, the names and addresses of entities from which the service contract forms were purchased, the names and addresses of insurers insuring the provider's contractual liability, and the names and addresses of sales personnel. It is the responsibility of the motor vehicle service contract provider to notify the department on a continuing basis of any changes in the filings.~~

~~(3) Every motor vehicle service contract shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract:~~

~~(a) Identifies the motor vehicle service contract provider and the service contract holder;~~

~~(b) Conspicuously states that the obligations of the motor vehicle service contract provider to the service contract holder are guaranteed under a service contract reimbursement insurance policy;~~

~~(c) Conspicuously states the name and address of the insurance company issuing the reimbursement insurance policy;~~

~~(d) Sets forth the total purchase price and the terms under which it is to be paid;~~

~~(e) Sets forth the procedure for making a claim, including an address and telephone number for claim assistance;~~

~~(f) Conspicuously states the existence of a deductible amount, if any;~~

~~(g) Clearly specifies the merchandise or services, or both, to be provided and any limitations, exceptions, or exclusions;~~

~~(h) Sets forth all of the obligations and duties of the service contract holder, including, but not limited to, the duty to prevent any further damage to the vehicle and the obligation to notify the provider in advance of any repair, if any;~~

~~(i) Sets forth any terms, restrictions, or conditions governing transferability of a service contract, if any;~~

~~(j) Sets forth applicable cancellation requirements; and~~

~~(k) States that the service contract holder has the right to file a claim directly with the insurer in the event of nonperformance by the motor vehicle service contract provider in the event covered service is not provided by the motor vehicle service contract provider within sixty days of proof of loss being filed by the service contract holder with the service contract provider, along with the method, requirements, and instructions for making such a claim.~~

~~(4) If the director determines that a motor vehicle service contract provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act, the director may issue an order to cease and desist from selling or offering for sale motor vehicle service contracts. Accompanied with that order shall be a notice of hearing setting forth the time, date, place, and issues to be heard. Such hearing shall take place not less than ten days nor more than thirty days from the date from the issuance of the order to cease and desist. Upon the failure of a motor vehicle service contract provider to obey an order to cease and desist issued by the director, the director may give notice in writing of the failure to the Attorney General, who may commence an action against the provider to enjoin that provider from selling or offering for sale motor vehicle service contracts.~~

~~(5) If any provision of this section is declared invalid, the remainder shall not be affected.~~

~~Sec. 9. The Revisor of Statutes shall assign sections 3 and 4 of this act to Chapter 44, article 7.~~

~~Sec. 10. Sections 5, 6, 7, 8, and 12 of this act become operative on January 1, 2021. The other sections of this act become operative on their effective date.~~

~~Sec. 11. Original sections 44-416.06 and 44-416.09, Revised Statutes Cumulative Supplement, 2018, are repealed.~~

~~Sec. 12. Original sections 44-3520 and 44-3523, Reissue Revised Statutes of Nebraska, and section 44-3521, Revised Statutes Cumulative Supplement, 2018, are repealed.~~