

INSURANCE

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Governor

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Life Insurers and Insurance Producers Cautioned about Zero-Premium or Free Life Insurance Offers

Recently, the Department has been made aware of situations involving out-of-state entities recruiting life insurance producers to market “zero-premium” or “free” life insurance plans. Upon further review, the Department found implications that such plans may involve “stranger-owned life insurance” or “investor-owned life insurance” concepts.

Nebraska insurance law prohibits the purchase of life insurance by individuals who do not have an insurable interest in the life of the insured individual. The term “insurable interest” is defined by statute so that insurable interest in the matter of life and health insurance exists when the beneficiary because of relationship, either pecuniary or from ties of blood or marriage, has reason to expect some benefit from the continuance of the life of the insured. This prohibition is aimed at preventing the speculation in or wagering on human life.

Marketing schemes that would permit an investor to make a speculative purchase of life insurance on an individual without having an insurable interest, and in exchange for providing a small portion of the life benefit to a beneficiary chosen by the insured person, are viewed by this Department as contrary to Nebraska’s insurable interest requirements.

Properly established “blanket” group life plans generally meet the above requirement by permitting insured individuals to name their own beneficiary, or by benefiting an organization with a pecuniary interest in the life of the insured parties. Additionally, charitable organizations, with written permission of the insured, and employers may generally purchase life

insurance due to the reasonable pecuniary benefit from the continuance of the life of an insured. Purely speculative investments in life insurance contracts, other than those permitted under the Nebraska Viatical Settlements Act ("Act") do not meet the insurable interest test.

Policyholders are not prohibited from naming a beneficiary of their choice. Policyholders are also allowed to knowingly assign their ownership interests, if contractually permissible, after a policy has been issued. When a policy is sold for the purpose of providing investment opportunities, the only proper avenue is through properly licensed viatical settlement providers, following the rules and requirements of the Act.

Please be aware that the Nebraska Department of Insurance intends to investigate and implement administrative action against individuals or entities marketing life insurance speculation or wagering schemes in this state that are contrary to, or circumvents Nebraska's insurance statutes, including the Act.

Additional guidance is found in [Neb.Rev.Stat. §44-704](#) which states, in part:

Life, sickness, or accident insurance; annuities; who may apply or own; restrictions.

(1) Except as provided in subsection (2) of this section, no policy of insurance shall be issued upon the person of any individual except upon the application of the individual insured or with the written consent of the individual insured. Nothing in this section shall be deemed to prohibit the immediate transfer or assignment of a life insurance policy or annuity contract so issued.

(2) Notwithstanding the provisions of subsection (1) of this section, (a) a husband or wife may effectuate a policy of insurance upon the person of the other and (b) any person may effectuate a policy of insurance upon the person of a child...

The statute further notes it applies to life insurance, but would not include a group life insurance contract or blanket insurance contract. Further, except for charitable entities described in section 501 (c)(3) of the Internal Revenue Code, no entity or person is permitted to procure or effectuate directly or by assignment any policy of insurance upon a person unless the benefits under such policy are payable to the individual insured, or to a person having at the time the policy is issued, an insurable interest in the insured.

Questions may be directed to Bruce Ramge, Chief of Market Regulation, at bramge@doi.state.ne.us.

PRODUCER LICENSING DIVISION

Property and Casualty Lines of Authority

Property and Casualty lines of authority are now separate. As such, producers may apply for a property only, a casualty only, or a property and casualty license. Exams are also available for these lines of authority.

Continuing Education Filing Fee

The Department charges one fee of \$5.00 for all continuing education in a renewal period and requests that you submit all continuing education for a renewal period with the renewal fee. Please do not send in \$5.00 for each continuing education certificate of completion.

Schedule of Fees for Producers

Listed below is a schedule of producer licensing fees. Please make sure to submit the correct fee, payable to the Department of Insurance.

<i>License/Service – State of Nebraska</i>	<i>Amount</i>
Resident Producer License	\$20.00
Non-Resident Producer License	\$40.00
Resident Renewal Fee	\$40.00
Nonresident Renewal Fee	\$80.00
Resident Reinstatement Fee (Within 30 days)	\$120.00
Nonresident Reinstatement Fee (Within 30 days)	\$160.00
Resident Reinstatement Fee (after 31days and before 1 year)	\$100.00
Nonresident Reinstatement Fee (after 31days and before 1 year)	\$100.00
Continuing Education Fee	\$5.00
Prelicensing Certificate of Completion	\$10.00
Certification/Clearance Letter/Duplicate License	\$5.00

Address Changes—Reminder to Producers and Agencies

Please make sure to update both business and home addresses with the department when changes are made. These changes can now be made online through the National Insurance Producer Registry (NIPR) at www.nipr.com. The NIPR will not charge a transaction fee for this service.

LIFE & HEALTH DIVISION

The Compact enhances the efficiency and effectiveness of the insurance product filing, review, and approval process, and provides consumers faster access to competitive insurance products.

Nebraska became a member state of the Compact upon Governor Heineman's signing of LB119 on March 9, 2005, and since then, has taken an active role in the development and administration of the Compact.

More information on the Compact, including instructions for submitting filings and uniform standards, can be found on the Compact website at www.insurancecompact.org.

Interstate Insurance Compact Update

The Interstate Insurance Compact (Compact) is an insurance regulation modernization initiative that will benefit state insurance regulators, consumers, and the insurance industry. The Compact enhances the efficiency and effectiveness of the insurance product filing, review, and approval process, and provides consumers faster access to competitive insurance products. The Compact promotes uniformity by applying national product standards that contain strong consumer protections.

The Compact established a multi-state public entity, the Interstate Insurance Product Regulation Commission (IIPRC) that serves as an agency of the 30 member states. The IIPRC will serve as a central point of electronic filing for certain insurance products, including life insurance, annuities, disability income and long-term care insurance.

Nebraska became a member state of the Compact upon Governor Heineman's signing of LB119 on March 9, 2005. Since then, the Department has taken an active role in the development and administration of the Compact.

Director Wagner chaired the Budget Committee during the organizational phase of the Compact Commission. After approval of the first budget, this committee was dissolved. John Rink, Actuarial Assistant, has participated on the NAIC Interstate Compact Product Standards Working Group. He has participated in the Life, Annuity, Long-Term Care, and Disability Income subgroups during the last five and one-half years. John has also served as Chairperson of the Disability Income subgroup for the last two years.

David Morris, Life and Health Analyst, is currently serving as an interim policy examiner for the Commission and will review form filings on a temporary part-time basis. The IIPRC has signed agreements with other states to provide interim staff until the IIPRC hires its own analysts.

More information on the Compact, including instructions for submitting filings and uniform standards, can be found on the Compact website at **www.insurancecompact.org**.

PROPERTY & CASUALTY DIVISION

Workers' Compensation Assigned Risk Plan

The Department and Travelers Indemnity Company (Travelers) agreed to extend the Nebraska Workers' Compensation Plan Agreement under which Travelers writes coverage for Nebraska policyholders unable to obtain workers' compensation coverage in the voluntary market. The current Agreement was slated to expire on December 31, 2007. The Agreement was extended for two years and will expire on December 31, 2009. The Department will then follow the bidding process for a plan insurer at the end of this term.

Nebraska's assigned risk plan is relatively unique because the plan's insurer, and not a state fund, receives all of the premiums and is usually liable for all of the losses. Nebraska's plan is also unlike plans found in most states without a state fund where the insurers in the voluntary market all participate in the plan. Nebraska's approach, which has been in effect since July 1, 1997, has never required any contribution from any insurer in the voluntary market. This is in sharp contrast to the assigned risk plan costs to insurers in the early 1990s.

In Nebraska, insurers bid on the right to administer our assigned risk plan based on a loss cost multiplier (LCM) and on the insurer's ability to service the business. If an insurer's bid to assume all of the plan's risk of loss would involve an LCM exceeding 2.50, the bid may involve a subsidy from the voluntary market wherein the voluntary market is forced to share losses with the assigned risk plan insurer. If this would occur, the Department will encourage proposals where this sharing of costs takes the form of the voluntary market covering losses in excess layers.

Under the current agreement with Travelers, this liability of the voluntary market occurs at various threshold points depending on the nature of the losses. For a single, ordinary loss not caused by terrorism or occupational disease (OD), this liability will probably begin after the loss exceeds \$5,500,000. There are a number of details involved with different provisions for terrorism and OD losses. The Department's website at www.doi.ne.gov/workcomp/nwcip.htm, provides these details for those that wish to explore the subject further.

As a percent of insurers' voluntary market premium, which is the basis that would be used to pro-rate any such losses, the Department views this exposure to the market as being very, very small. While medical costs on serious workers' compensation claims are sometimes subject to nasty development, a loss of \$5,000,000 or so is still very unusual. The Department is not aware at this time of any assigned risk losses that exhibit a significant chance of developing to that magnitude.

If an insurer has questions about this article after reading the material on the Department's website, please contact Alan Wickman at awickman@doi.state.ne.us.

LEGAL DIVISION

Court Cases

***Safeco Ins. Co. of America v. Burr*, 127 S. Ct. 2201 (2007)**

The Supreme Court issued a consolidated opinion regarding *Safeco* and *Geico General Ins. Co. v. Edo*. Both cases involved the Fair Credit Reporting Act (FCRA), which requires notice to consumers subject to “adverse action...based in whole or in part on any information contained in a consumer [credit] report.” 15 U.S.C. § 1681m(a). For insurance companies, adverse action is “a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for.” 15 U.S.C. § 1681a(k)(1)(B)(i).

GEICO relied on a “neutral” credit score test to determine if notice was necessary. An applicant’s proposed insurance premiums, taking credit scores into account, are compared to the rates he would have been offered with a neutral credit score. If the applicant’s rates would have been lower with a neutral credit score, then GEICO provided adverse action notice; otherwise, no notice was given. After receiving less than optimum rates, Ajene Ado filed suit, seeking statutory and punitive damages under § 1681n(a) for willful failure to comply with the notice requirements. Safeco also relied on credit reports to determine initial insurance premiums. After Charles Burr and Shannon Massey did not receive the best rates, they joined a proposed class action, alleging willful violation of the notice requirements and seeking statutory and punitive damages.

The Court made several important holdings regarding the FCRA. First, the Court construed the adverse notice requirement to apply not only to renewals of insurance, but also to new applications. Therefore an applicant that received higher rates based on his or her credit score would be deemed subject to an “increase” in rates.

Second, the Court concluded that willful failure to comply with the requirements of the FCRA includes acts in reckless disregard of statutory duty. Further, a company may only act in reckless disregard of its obligations under the FCRA if the company’s misinterpretation of the statute was objectively unreasonable and the risk of violating the law under the mistaken interpretation is substantially greater than a merely careless interpretation. Safeco construed the statute to exclude initial applications from the notice requirement, and it thus believed its actions were in conformity with the FCRA. The Court held that Safeco was not liable under the statute, since its reading of the statute was not objectively unreasonable.

Third, the Court held that notice is only mandatory if the applicant would have received a better rate with a neutral credit score. With regard to GEICO, the Court concluded that the initial rate offered to Edo was the same one he would have received had his credit score not been taken into account. Therefore, Edo was not entitled to adverse action notice.

Krumwiede v. Metropolitan Util. Dist., Case No. A-06-753 (April 17, 2007)

Krumwiede sought workers' compensation coverage for medical expenses and disability arising from an occupational disease caused by continual exposure to harmful air in her work as a computer programmer at Metropolitan Utilities District (MUD). Having been forced to end her employment with MUD, Krumwiede also sought vocational rehabilitation to facilitate her return to suitable employment.

The Court of Appeals ultimately affirmed the trial court's decision that her pre-existing respiratory problems were substantially aggravated and she had sustained injury by reasons of occupational disease arising from her employment.

In assessing Krumwiede's claim for vocational rehabilitation, the Court of Appeals stated that the analysis must account for wages lost through her inability to continue her employment with MUD, not merely her ability to procure employment generally. The issues arose largely from the fact that Krumwiede's programming training was dated, and her appeal in the job market outside of MUD was limited. On these grounds, the court held that Krumwiede was entitled to vocational rehabilitation since she was rendered unable to perform suitable work for which she had been trained. Her loss of earning power would not be assessed until after she had completed the rehabilitation.

Rue v. Douglas County Corrections, Case No. A-06-606 (May 1, 2007)

On January 22, 2004, Rue, a corrections officer for Douglas County Corrections (DCC), responded to a code blue. During the altercation, an inmate struck Captain Lee above the eye, and his blood splattered on Rue. Rue also sustained injuries to his neck, shoulder, and hip. Although Rue's physical injuries subsided quickly, Rue suffered from ongoing anxiety and other mental and emotional problems following the incident, and he was unable to work from August 2004 through November 2004. Rue sought compensation for posttraumatic stress disorder (PTSD).

The issue on appeal is whether Rue is entitled to compensation for his PTSD. The Court of Appeals stated that a person should be compensated for mental illness when it is proximately caused by the work injury and results in disability. The court concluded that Rue was not entitled to compensation for his PTSD because his PTSD was connected to the accident generally, but not to the physical injury to his shoulder, back, and hip. The court further held that PTSD is not itself a compensable occupational disease because PTSD does not itself involve violence to the physical structure of the body.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1709 Trenton A. Broers Grand Island, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond to Department within 15 business days; and violated any insurance law.	Consent Order \$1,000 admin. fine 6/07/07
A-1713 Superior Title & Escrow, LLC and Daniel C. Bohm Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-19,112(3). Failed to file required form with the Director.	Consent Order \$500 admin. fine 4/16/07
A-1715 Bud Clarke Hauppauge, NY	Violated <u>Neb.Rev.Stat.</u> §§44-1525(10) and 44-4059(1)(h). Misstatement on application; and unfair trade practice violation.	Consent Order \$1,000 admin. fine 4/30/07
A-1716 Michael Tvrdy Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(1)(a) & (f), and 44-4059(1)(b), (f) & (h). Misrepresented benefits; misrepresented surrender rate; violated any insurance law; convicted of a felony or a Class I, II, or III misdemeanor; and used fraudulent, coercive or dishonest practices.	Consent Order Producer license suspended for one year 6/14/07
A-1718 (2 actions) Brian T. Cavanaugh Omaha, NE	1. Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) & 44-4059(1)(b). Failed to respond to Department within 15 business days; and violated any insurance law. 2. Failed to pay administrative fine within the date allowed per the Consent Order.	1. Consent Order \$500 admin. fine 5/10/07 2. Order License revoked 6/21/07
A-1719 Kelly Gutierrez Columbus, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1) (h). Used fraudulent, coercive or dishonest practices.	Consent Order Producer license revoked 6/22/07
A-1720 Title Associates, LLC and Jerry D. Barton Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-319, 44-4059 (1)(b), (d), (g) & (h), & 44-19,120(1). Violated any insurance law; improperly withholding, misappropriating, or converting any money; unfair trade practice violation; using fraudulent, coercive or dishonest practices; failed to hold funds in a fiduciary capacity; and violated the Title Insurance Agent Act.	Order Producer and agency licenses revoked 5/23/07

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1722 Daniel F. Hibberd Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4054(8), 44-4065(2) and 44-4059(1)(f). Failed to change address within 30 days; failed to report arraignment or criminal prosecution; violated any insurance law; and convicted of a felony or a Class I, II, or III misdemeanor.	Consent Order Producer license revoked 5/9/07
A-1725 Michael W. Carpenter Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) & 44-4059(1)(b) & (g). Failed to respond to Department within 15 business days; violated any insurance law; and unfair trade practice violation.	Consent Order \$1,000 admin. fine 7/2/07
A-1726 Ann L. Johnson Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(1)(a) & (2) and 44-4059(1)(b), (e) & (h). Unfair trade practices violation; misrepresented benefits; used misleading advertisement materials; violated any insurance law; misrepresented insurance product; and used fraudulent, coercive or dishonest practices.	Consent Order \$1,500 admin. fine 6/15/07
A-1728 Nebraska Land Title & Abstract Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(h) and 44-19,116. Used fraudulent, coercive or dishonest practices; and violated of closing requirements.	Consent Order \$1,000 admin. fine 7/12/07
A-1731 Scott Antoniak Omaha, NE	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license granted 7/09/07
A-1732 Thomas D. Miller Columbus, NE	Violated <u>Neb.Rev.Stat.</u> §44-4057. Failed to inform the Director of name under which doing business.	Consent Order \$250 admin. fine 7/2/07
A-1735 Darcie Kay Simmons Kearney, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive or dishonest practices.	Consent Order Producer license revoked 7/17/07
A-1736 Vincent W. Heese Earling, IA	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive or dishonest practices.	Consent Order \$350 admin. Fine 7/17/07

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1625 Insurers Administrative Corporation Phoenix, AZ	Violated <u>Neb.Rev.Stat.</u> §44-1525(11). Failed to respond to the Department within 15 business days.	Consent Order \$1,000 admin. fine 4/24/07
C-1628 First Health Life & Health Insurance Company Downers Grove, IL	Violated <u>Neb.Rev.Stat.</u> §§44-7302(2) (a), 44-7308(3)(a), 44-7308(f)(ii) and (g). Various violations of Health Care Grievance Producers Act.	Consent Order \$2,000 admin. fine 4/26/07
C-1631 Equity Mutual Insurance Company Overland Park, KS	Company placed in liquidation in its domiciled state on 8/18/04.	Order Certificate of Authority revoked 5/3/07
C-1632 Casualty Reciprocal Exchange Overland Park, KS	Company placed in liquidation in its domiciled state on 8/18/04.	Order Certificate of Authority revoked 5/3/07
C-1633 Ameritas Variable Life Insurance Company Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §44-325 and Title 210 NAC Ch. 24 §019.07. Dividend payment violation; and failed to give adequate notice of dividend payment.	Consent Order \$2,500 admin. fine 5/14/07
C-1637 Trustmark Life Insurance Company Lake Forrest, IL	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(11), 44-7308(3)(a), and Title 210 NAC Ch. 61 §006.02. Unfair trade practice violation; failed to respond to the Department within 15 business days; Health Care Grievance Producers Act violation; and claims settlement violation.	Consent Order \$5,000 admin. fine 6/11/07
C-1638 Markel Insurance Company Glen Allen, VA	Violated <u>Neb.Rev.Stat.</u> §44-1525(12). Accepted an application from a producer not appointed with the company.	Consent Order \$500 admin. fine 6/7/07

EXAMINATION DIVISION

Pre-Need Exams Completed During Second Quarter, 2007

Dolce-Scheef Mortuary
Elwood Funeral Home, Inc.
Graceland Park Cemetery
Higgins Funeral Home
Hitchcock Funeral Home, Inc.
Hoch Funeral Homes, Inc.
Layton Funeral Home, Inc.
Peterson Mortuary, Inc.
Wenbug Funeral Home, Inc.

Financial Examinations Completed During Second Quarter, 2007

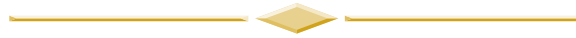
Acceptance Casualty Insurance Company
Acceptance Indemnity Insurance Company
American Republic Corp Insurance Company
Berkshire Hathaway Life Insurance Company of Nebraska
Blue Cross and Blue Shield of Nebraska
Columbia Insurance Company
Columbia National Insurance Company
Cornhusker Casualty Company
First National Life Insurance Company of the USA
Jefferson Pilot Financial Insurance Company
Mutual Insurance Company of Saline and Seward Counties
NASB All Lines Interlocal Cooperative Aggregate Pool
National Fire and Marine Insurance Company
National Indemnity Company
Oak River Insurance Company
Olive Branch Assessment Insurance Society, Inc.
OMNI Dental Associates, Inc.
Platte River Insurance Company
Redwood Fire and Casualty Insurance Company
Wesco-Financial Insurance Company
World Corp Insurance Company
World Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



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Department Calendar
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- August 24- Consumer Information Booth,
September 3: Devaney Center, Nebraska State Fair
- September 3: Department Closed - Labor Day
- October 8: Department Closed - Columbus Day
- November 12: Department Closed - Veteran's Day Observed



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