

INSURANCE

Pete Ricketts
Governor

Eric Dunning
Director

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A Message from the Director....

Eric Dunning Appointed to Serve as Director of Insurance



Eric Dunning
Director of Insurance

As newly appointed Director of Insurance, I would like to use this opportunity to comment on how grateful I am to Governor Ricketts for this opportunity to work with the Nebraska Department of Insurance so we can continue to grow Nebraska. I am excited to work with such a talented and dedicated group of fellow regulators at the Department and look forwarding to building on the legacy of our outgoing director, Bruce Ramage.

If you are a Nebraska policyholder, a regulated entity, or are otherwise impacted by insurance, please know that all of the Department's teammates' doors, emails, and telephones are open for communication. I hope you will find my future comments and the articles in this quarterly newsletter informative and helpful.

The pandemic has made for an exciting yet challenging time. The Nebraska Department of Insurance continues to actively monitor and plan for any necessary reforms, all the while performing its day-to-day duties of monitoring solvency, market conduct oversight, consumer assistance, public information, licensing, rate and form review, fraud prevention, and premium taxes. Through each of these tasks, Department teammates continue to strive for effective and efficient ways to do their jobs.

I look forward to continuing the service provided by the Department to this great state of Nebraska.

CONSUMER AFFAIRS DIVISION

Staff Update

Ashley Krei has joined the division as an investigator working primarily with property and casualty concerns.

Ashley Krei has joined the division as an insurance investigator working primarily with property and casualty concerns. She can be reached at ashley.krei@nebraska.gov.

Agents Termed for Cause

The division is updating how it handles agents termed for cause upon notification from a company.

Companies are now required to provide the methodology used in formulating conclusions and documentation showing how it was decided to term an agent for cause.

The Department is now requiring that companies provide the methodology used in formulating conclusions and documentation showing how it was decided to term an agent for cause.

The requested information is necessary to determine if the agent should be referred to our legal division for possible administrative action. A solid case for administrative action cannot be built without the information.

Questions concerning the information required in the notification to term an agent for cause can be directed to Barbara Peterson at barbara.peterson@nebraska.gov.

LIFE & HEALTH DIVISION

Extension of Transitional Policies

States have the option to extend transitional policies for individual and small group health insurance plans to policy years beginning on or before October 1, 2022 provided that all policies end by January 1, 2023.

On January 19, 2021, the Center for Consumer Information and Insurance Oversight (CCIIO) issued **guidance** that allows the states the option to extend transitional policies for individual and small group health insurance plans to policy years beginning on or before October 1, 2022 provided that all policies end by January 1, 2023.

The Department issued a **Notice** on April 21 that has been posted to the Department's website. Any questions concerning the notice may be directed to Laura Arp at laura.arp@nebraska.gov.

The U.S. Department of Labor issued a press release announcing the court appointment of an independent fiduciary for Medova and Lifestyle Health Plans.

Medova and Lifestyle Health Plans

The U.S. Department of Labor issued a press release on April 12, 2021, announcing the court appointment of an independent fiduciary for Medova and Lifestyle Health Plans. Contact information for the independent fiduciary is included in the press release, available online [here](#).

The appointment renewal date begins on April 30, 2021 and ends on August 2, 2021.

PRODUCER LICENSING DIVISION

2021 Appointment Renewal Process

The appointment renewal date begins April 30, 2021 and ends August 2, 2021. All appointment renewals must be filed electronically through the National Insurance Producer Registry (NIPR) at www.nipr.com/renWelcome.htm. Invoices will be available through 4:00 PM CDT on August 2, 2021.

The NIPR has posted details on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes. Specific Nebraska renewal information can be found on the NIPR website by clicking [here](#).

Questions regarding the renewal process may be directed to NIPR at customerservice@nipr.com or 855-674-6477. Questions can also be sent to the Nebraska Department of Insurance at doi.licensing@nebraska.gov, or 402-471-4913. [Live Chat](#) is also available from the Department's home page at doi.nebraska.gov.

The Omaha Prometric testing site has moved to 12565 West Center Road, Suite 160, in Omaha.

New Location for Omaha Testing Site

The Prometric testing site in Omaha, Nebraska has moved to a new location. The site is now located at 12565 West Center Road, Suite 160, in Omaha.

Agency licenses that expire on April 30, can be submitted for renewal via NIPR.com or by mailing renewal fees to the Department.

Agency License Renewals

Most agency licenses renew on April 30. Agency renewals can be submitted via NIPR.com or by mailing your renewal fees to the Department.

Questions concerning an agency renewal may be directed to the Department at doi.licensing@nebraska.gov, or 402-471-4913. [Live Chat](#) is also available from the Department's home page at doi.nebraska.gov.

PROPERTY & CASUALTY DIVISION

Workers' Compensation Form and Rate Filing Guidance

The division's quarterly guidance documents can be found on the Department's website under the dropdown for Insurers.

The division has posted its quarterly guidance document, "Workers' Compensation Form and Rate Filing Requirements." Quarterly guidance documents are posted on the **Department's website** under "Insurers/Property and Casualty Information/Filing Guidance." Questions the guidance documents may be directed to Connie Van Slyke at connie.vanslyke@nebraska.gov.

FRAUD DIVISION

Staff Updates

After 23 years of dedicated service, Charles "Chuck" Starr has retired. In 1997, Chuck became one of the division's first commissioned fraud investigators. He brought with him 22 years of law enforcement experience and advanced training in accident reconstruction and financial crime investigations. His expertise contributed to the division's long-standing reputation and success in prosecuting complex fraud cases.

Chuck became the IFPD's division chief in 1995. Since that time, he has implemented many procedures centered on open communication with those the IFPD serves and maintains the highest integrity during investigations. Chuck provided outstanding service as both a leader and a servant to the anti-fraud community and the consumers of the State of Nebraska. His sense of personal responsibility to the department and to the anti-fraud community carried on in the core values of the division.

Following Chuck's retirement, Kimberly Church was promoted to Fraud Division Chief. Kim welcomes your communication and can be reached at kimberly.church@nebraska.gov.

2021 Annual Insurance Fraud Conference Postponed

As we enter 2021, the prospect of the relaxing of travel restrictions and the world coming together once more is exciting. However, we are not there yet. As a result, the IFPD has chosen to postpone its annual fraud conference until August 2022.

If your organization would like the IFPD to provide a virtual presentation or an in-person training, please contact Division Chief Kimberly Church at kimberly.church@nebraska.gov or by phone at 402-471-4999.

Staged Accidents—A Common Scam

Staged accidents are referred to by many monikers—Swoop & Squats, Drive-Downs, and Go & Stops. No matter what someone chooses to call it, it is insurance fraud.

Every year insurance fraud costs American consumers an estimated \$80 billion. The personal price comes in the form of raised premiums, cancelled policies, costly vehicle repairs possible legal expenses, injuries and even death. Some ways to fight against being a victim of a staged accidents include:

- **Never tailgate.** Allow plenty of space between your vehicle and the vehicle in front. You have more time to stop safely.
- **Photograph** the scene, vehicle damage and passengers.
- **Count** passengers in the other vehicle. Get names, phone numbers and driver's license.
- **How do they behave?** Are they fine, even joking, but suddenly act injured when police arrive?
- **Get a police report** – even for minor damage.
- Only see medical and legal providers you know and trust. **Ignore strangers** who steer you.
- **Notify** your insurer, police and state insurance fraud bureau if you suspect a setup scam. Reports can be made to the Nebraska IFPD at DOI.FraudPrevention@nebraska.gov.

Court Actions

Douglas County District Court, Case CR20-1908

The defendant was charged with a fraudulent insurance act, a Class IV felony. The defendant was accepted and participated in the Douglas County Diversion Program. As part of the program, the defendant was ordered to pay \$4,537.68 in restitution to the insurance company. Upon successful completion of the Diversion Program the court case will be sealed.

Sarpy County Court, Case CR20-1232

State v. Reginal J. Baul

Reginal Baul was initially charged with a fraudulent insurance act, a Class IV felony. Mr. Baul pled guilty to an amended complaint, a Class I misdemeanor, and was sentenced to 240 days in jail plus court costs.

Hall County District Court, Case CR20-345

State v. Rhonda S. Rowe

Rhonda Rowe was charged with a fraudulent insurance act by an agent, a Class IV felony. She pled no contest and was sentenced to 90 days in jail; five years' probation plus \$1,840 in associated fees; and ordered to pay \$841.59 in restitution to the Insurance Fraud Prevention Division for their investigative costs.

Box Butte County District Court, Case CR20-53

State v. Tamara L. Whirlwind Horse

Tamara Whirlwind Horse was charged with a fraudulent insurance act; a Class III felony. Pursuant to a plea agreement, Ms. Whirlwind Horse pled no contest to an amended charge of theft by deception, a Class I misdemeanor. She was sentenced to 18 months' probation and ordered to pay \$12,800 to the insurance company.

LEGAL DIVISION

Regulation Updates

Amended Company Bulletins

CB-130 (AMENDED) - FILING GUIDANCE FOR INDIVIDUAL AND SMALL EMPLOYER HEALTH AND STAND-ALONE DENTAL PLANS IN NEBRASKA

CB-130 (Amended) was issued to provide guidance for filers of individual, small group and stand-alone dental plans (SADP), offered on and off the Federal Facilitated Marketplace, that wish to issue or renew plans in Plan Year 2022. The amended bulletin provides dates and corresponding actions that relate to plan year 2022. A copy of **CB-130 (Amended)**, dated April 20, 2021, can be found on the Department's website at doi.nebraska.gov.

CB-138 (AMENDED) - STANDARD VALUATION ACT VALUATION MANUAL UPDATE

On April 14, 2021, the Department amended Bulletin CB-138 to incorporate the updates made to the valuation manual that were fully adopted by the National Association of Insurance Commissioners for the reporting year 2021. A copy of **CB-138 (Amended)**, dated April 14, 2021, can be found on the Department's website at doi.nebraska.gov.

Rebate and Inducement Guidelines

Two questions commonly asked by producers involve rebates and inducements and payment of commissions. Rebating and inducements are prohibited pursuant to Neb. Rev. Stat. § 44-361. Commissions and fees related to the business of an insurance producer are described in Neb. Rev. Stat. § 44-4060.

An insurance producer may provide a gift of **nominal** value to prospective insureds. These gifts shall not be distributed on a discriminatory basis or be conditioned on the purchase of insurance. If a gift is of sufficient value to induce the purchase of insurance, it is likely an inducement and a violation of Neb. Rev. Stat. § 44-361. Additionally, producers may not provide a rebate of the premium payable on the policy. Providing a rebate includes, but is not limited to, promising, allowing, giving, paying directly or indirectly any part of the policy premium.

The producer may provide commissions, service fees, brokerage, or other valuable consideration to someone if that someone sold, solicited, or negotiated insurance in the State of Nebraska, and was licensed according to the Insurance Producer Licensing Act. Neb. Rev. Stat. § 44-4060(1). Accordingly, no one shall accept a commission, service fee, brokerage or other valuable consideration if a producer license was required and there was no such license. *Id.* at 2.

The NAIC is completing a model law for rebating, and publication is forthcoming.

Any questions or concerns regarding rebating, inducements, and producer compensation, may be directed to Kevin Schlautman at kevin.schlautman@nebraska.gov or via phone at 402-471-4707.

Legislative Updates

LB 21 Signed by Governor Ricketts

The Department of Insurance sought LB 21 to revise certain statutes that had become outdated or difficult to administer. LB 21 becomes effective 90 days following adjournment of the Legislature, which is expected to be on or about September 10.

First, the bill amends the existing statute that requires the Department to remit fines and penalties to the “permanent school fund.” This is replaced with language that complies with the Nebraska Constitution.

Second, the bill repeals the required approval from both the Department of Health and Human Services (DHHS) and the federal Centers for Medicare & Medicaid Services for creating certain HMOs. Since federal law preempts state law in this area, review by DHHS is unnecessarily repetitive.

Last, the bill addresses continuing education requirements for insurance agents working under their first license. Due to statutes that link insurance license renewals to licensees’ birthdays, there are occasions where an individual obtains a license only to have it expire shortly after issuance. A licensee has to complete a substantial continuing education requirement prior to license renewal, even if the new agent would have just completed a comprehensive written exam on Nebraska insurance laws. LB 21 eliminates the continuing education requirement for renewal of the first license if that first license is set to expire less than one year after the it was issued.

Questions about LB 21 may be directed to Tom Green at thomas.green@nebraska.gov.

Annuity Suitability “Best Interest” Model Adopted

LB 22, sought by the Nebraska Department of Insurance, amends existing Nebraska laws relating to the sale and forfeiture of annuities. The bill, which was passed by the Legislature and signed by Governor Ricketts, becomes effective immediately.

LB 22 adopts revisions to the National Association of Insurance Commissioners’ (NAIC) model.

The original Suitability in Annuity Transactions model was adopted to protect the public interest and facilitate the fair and equitable treatment of insurance consumers. It has been updated periodically. Every state has adopted some version of the model.

In February 2020, the NAIC revised the model after extensive input from insurance regulators, consumer representatives, and the insurance industry. Those revisions incorporate a “best interest” standard requiring all recommendations made by agents or insurance carriers to be in the best interest of the consumer and ahead of any financial interest the specific agent or insurance company may have in the transaction.

LB 22 requires agents and insurers to satisfy obligations outlined in four key areas: care, disclosure, conflict of interest, and documentation. Agents are required to disclose and answer questions about their role in the transaction, their compensation, and any material conflict of interest. The changes require carefully and clearly explaining to the consumer the basis of any recommendation to ensure consumers understand why a product is consistent with their particular financial needs and objectives. Agents and carriers are also required to document, in writing, any recommendation and the basis for such recommendation.

Finally, the new model is designed to be consistent with the U.S. Securities and Exchange Commission's "Regulation Best Interest", also known as "Reg BI", which was finalized in June 2019.

Questions regarding LB 22 may be directed to Tom Green at thomas.green@nebraska.gov.

Case Summary

Millard Gutter Company v Farm Bureau Property & Casualty Insurance Company, 29 Neb. App. 678, ___N.W.2d___ (March 30, 2021)

The nature of this case involves Millard Gutter Company ("Millard") and Farm Bureau Property & Casualty Insurance Company ("Farm Bureau"). Millard was the assignee for several claims related to 2013 storms. The complaint alleged that Farm Bureau was in breach of contract for failing to pay on said assignments. There were filings from all parties and Millard filed an amended complaint that included the names and addresses of twenty (20) individuals who assigned claims before the court ruled on Farm Bureau's motions.

After briefs were submitted, the district court granted Farm Bureau's motion to dismiss reasoning the inchoate bad faith claims were not assignable, and there were no allegations of bad faith claims when the assignments were made. The motion for a more definite statement was sustained related to date of alleged contract breaches and possible statute of limitations defenses.

Millard did not file a second amended complaint as ordered. The matter was dismissed without prejudice. The Nebraska Court of Appeals reversed and remanded for further proceedings.

Millard appealed alleging three errors: 1) dismissing bad faith claims, 2) ordering a second amended complaint, and 3) dismissing the amended complaint. The district court found no bad acts were alleged prior to the assignments and the "inchoate claim for bad faith cannot be assigned," and there was no record that the assignees included the tort claims for bad faith. Millard argued that it stood in the shoes of the insureds, and the allegations related to the bad faith claims were "sufficiently plausible" and would continue to be developed through discovery.

The State of Nebraska recognizes first-party bad faith causes of action. A first-party bad faith claim “is based on the covenant of good faith and fair dealing which, in turn, is premised on a contractual relationship.” *Braesch v. Union Ins. Co.*, 237 Neb. 44, 464 N.W.2d 769 (1991) *disapproved on other grounds*, *Wortman v Unger*, 254 Neb. 544, 578 N.W.2d 413 (1998).

Because the contractual relationship was between the policyholder and Farm Bureau, Millard, a non-policy holder, did not have standing for a first-party bad faith cause of action and cannot assert a first-party bad faith claim. The Court of Appeals determined that it and the Nebraska Supreme Court had not explicitly ruled on bad faith claim assignability or requirements for the same; further, the Court of Appeals did not need to decide assignability of a bad faith claim in this case.

The Court of Appeals wrote that Nebraska is a notice pleading jurisdiction. *Tryon v. City of North Platte*, 295 Neb. 706, 890 N.W.2d 784 (2017). With this pleading regime, it is not required to plead legal theories or statutes “so long as the pleading gives fair notice of the claims asserted.” *Id.*

The Court of Appeals found the amended complaint sufficiently gave Farm Bureau notice of Millard’s claims including Farm Bureau having a contractual obligation to pay costs of repairs, Millard was the valid assignee, Farm Bureau refused to pay, and, finally, Farm Bureau acted in bad faith. The Court of Appeals found that the pleadings gave Farm Bureau proper notice of the allegations. Additional information regarding tort claims and valid assignments of those claims may be found on discovery.

The notice pleading rules factored into the decision regarding the Order for More Definite Statement. Minimum requirements needed to establish in a breach of contract action are: existence of a promise, its breach, damages, and compliance with conditions precedent that activate a defendant’s duty. *Kotrous v. Zerbe*, 287 Neb. 1033, 846 N.W.2d 122 (2014). The Court of Appeals found Millard met these requirements.

The alleged claims were associated with 2013 storms. The amended complaint specified the incidents occurred on April 9, 2013. The complaint was filed on April 9, 2018, so it was filed within the five-year statute of limitations.

The Court of Appeals may look at federal decisions since Nebraska’s notice pleading is modeled after the Federal Rules of Civil Procedure. “An allegation of time or place is material when testing the sufficiency of a pleading.” Fed. R. Civ. P. 9(f). A more definite statement motion is granted when the allegations may fall outside of the statute of limitations because the allegations span a number of years. In this case, the allegations were within the statutes of limitations, and a more definite statement was not necessary.

The final alleged error was not discussed as the Court of Appeals determined the district court erred when it granted the motion to dismiss. Further, the order to make more definite was an abuse of discretion. The Court of Appeals reversed and remanded the matter for further proceedings.

Actions Taken Against Producers & Agencies

CAUSE NO.	ALLEGATION	DISPOSITION
A-2239 Paul Stover Martell, NE NPN# 19448982	Violated <u>Neb. Rev. Stat.</u> §§ 44-4059(1)(g), 44-4059(1)(h), and 44-1524(1), 44-1525(2). Used fraudulent, coercive, or dishonest practices; made false or fraudulent statement(s) on an application policy; committed unfair trade practice; fraudulent advertising.	Consent Order \$500 fine 3/16/2021
A-2241 Jeremy Rutherford Omaha, NE NPN# 17084447	Violated <u>Neb. Rev. Stat.</u> § 44-4059(1)(b). Violated any insurance law.	Order License Revoked 3/1/2021
A-2242 Gagliardi Insurance Services, Inc. San Jose, CA NPN# 2110851	Violated <u>Neb. Rev. Stat.</u> §§ 44-4059(1)(o). Failed to maintain license in home state.	Order License Suspended 3/5/2021
A-2243 Dominic Gagliardi Philadelphia, PA NPN# 240344	Violated <u>Neb. Rev. Stat.</u> §§ 44-4059(1)(b), 44-4059(1)(i). Violated any insurance law; producer license revoked in another state.	Order License Revoked 3/5/2021
A-2249 Andre Graves Bellevue, NE	License Application Denial.	Order License Denied 3/18/2021
A-2250 Byron Pryor Clancy, MT NPN# 18319993	Violated <u>Neb. Rev. Stat.</u> §§ 44-4059(1)(b), 44-4059(1)(g), 44-1525(10) and 44-1525(11). Violated any insurance law; used fraudulent, coercive or dishonest practices; used false or fraudulent statement to obtain commission; failed to respond to department inquiry.	Order License Revoked 4/1/2021

EXAMINATION DIVISION

Delay in Receipt of Certificate of Authority

Certificates of Authority in Nebraska expire on April 30 each year. The Nebraska Department of Insurance normally prints updated certificates and mails to every company each year by mid-April.

This year, with the change of Director of Insurance becoming effective April 19, the printing and mailing of those certificates have been delayed. Please be assured if you are compliant with all filings, your company has been renewed in the system. It is only the printing of the certificate that has been delayed.

If you require an updated copy for a specific reason prior to receiving the new certificate, please contact Kristy Hadden to receive an electronic copy. Kristy can be reached via email at **Kristy.Hadden@nebraska.gov**.

Financial Examinations Completed During First Quarter, 2021

American Family Life Assurance Company of Columbus
Continental American Insurance Company
Globe Life and Accident Insurance Company
Liberty National Life Insurance Company
Medica Regional Insurance Company
Tier One Insurance Company
United American Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.nebraska.gov. Copies can be obtained from the Department at a cost of \$.50 per page.

Congratulations



NDOI Employees of the Quarter

- ☆ Eva Priebe, Market Conduct Division
- ☆ Kristy Hadden, Financial Examination Division

2020 Excellence in Leadership Awards

- ☆ NDOI Actuarial Team: Rhonda Ahrens, Gordon Hay, Michael Muldoon, Derek Wallman,



Department Calendar

- April 30: Department Closed - Arbor Day Observed
- May 31: Memorial Day
- July 5: Department Closed - Independence Day Observed