

## N-O-T-I-C-E

The Director of the Department of Insurance has scheduled a public hearing as required by Administrative Procedure Act, Neb. Rev. Stat. §84-901 to §84-920 for the proposed amendment of Title 210, Nebraska Administrative Code, Chapters 6, Deposit of Securities; Definitions; Authorized Depositories; Manner of Depositing and Withdrawing Securities; Insurance; and Chapter 26: Department Administration, Practice and Procedure. The proposed amendments remove superfluous and repetitive language and attempt to eliminate especially troubling restrictive words, thereby easing the overall regulatory burden that may be experienced by the public and citizens of Nebraska.

There is no fiscal impact to the Department of Insurance, political subdivisions, or regulated public due to the proposed amendment of Chapters 6 and 26.

Copies of Chapters 6 and 26 are available for public examination at the Department of Insurance, 1526 K St, Suite 200, PO Box 95087, Lincoln, NE 68509-5087, as well as the Office of the Secretary of State, State Capitol Building, Room 343, Lincoln, NE 68509, the Secretary of State's website at [www.sos.ne.gov](http://www.sos.ne.gov) and through the Department of Insurance's web site at [www.doi.nebraska.gov](http://www.doi.nebraska.gov). A copy of the Fiscal Impact Statement is available at the Department of Insurance and at the Department's website [www.doi.nebraska.gov](http://www.doi.nebraska.gov). All persons interested in presenting oral or written views on the proposed amendment of Chapters 6 and 26 will be granted an opportunity at a hearing to be held before the Director of Insurance, beginning at **10:00 a.m. on the 22nd day of August, 2023**, and will continue until concluded. Said hearing will be held at 1526 K Street, Suite 200, Lincoln, NE 68508-2734 on the 2<sup>nd</sup> Floor, in the Buffalo Room. Interested persons may submit written comment to the Department before the date of the hearing, which will be entered into the record.

Reasonable accommodations will be provided to persons with disabilities upon advanced request. The hearing will be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

All persons interested therein may appear at said time and be heard in reference thereto.

Dated this 18<sup>th</sup> day of July, 2023.

  
ERIC DUNNING  
Director of Insurance

DRAFT FISCAL IMPACT STATEMENT

Agency: Department of Insurance	
Title: 210	Prepared by: Megan VanAusdall
Chapter: 06	Date prepared: June 16, 2023
Subject: Deposit of Securities; Definitions; Authorized Depositories; Manner of Depositing and Withdrawing Securities; Insurance	Telephone: 402-471-4742

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( X )	( X )	( X )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency: **N/A**

Political Subdivision: **N/A**

Regulated Public: **N/A**

If indeterminable, explain why: **N/A**

DRAFT FISCAL IMPACT STATEMENT

Agency: Department of Insurance	
Title: 210	Prepared by: Megan VanAusdall
Chapter: 26	Date prepared: June 16, 2023
Subject: Department Administration, Practice and Procedure	Telephone: 402-471-4742

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( X )	( X )	( X )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency: **N/A**

Political Subdivision: **N/A**

Regulated Public: **N/A**

If indeterminable, explain why: **N/A**

## Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

### Chapter 6 - DEPOSIT OF SECURITIES; DEFINITIONS; AUTHORIZED DEPOSITORIES; MANNER OF DEPOSITING AND WITHDRAWING SECURITIES; INSURANCE

~~001. Statutory authority. This rule is promulgated under the authority of Section Neb.Rev.Stat. §44-319.11, R.S. 1943, provides that the Director of Insurance may designate any bank or trust company domiciled in the State of Nebraska as the depository for the Department of Insurance to receive and hold for safekeeping purposes any securities deposited pursuant to law. It also provides that the Director of Insurance shall adopt reasonable rules and regulations relative to the manner in which securities may be deposited and withdrawn. Pursuant to this authorization and Section §44-101.01 R.S. 1943, IT IS Hereby Ruled:~~

002. Definitions. Unless the context clearly indicates otherwise:

~~002.01 "Director" shall mean the Director of Insurance.~~

~~002.01 2 "Department" shall mean the Department of Insurance.~~

~~002.03 "Authorized Depository" shall mean a bank or trust company domiciled in the State of Nebraska which has been designated by the Director to accept for safekeeping purposes securities deposited pursuant to Section Neb.Rev.Stat. §§44-319.01 to through 44-319.13, R.S. 1943, Sections §44-812 to 44-825, R.S. 1943, §44-821, §44-822, §44-825, and Section §44-150, R.S. 1943 §44-32-139, §44-3308, §44-3808 and §44-4718.~~

002.01 4 "Deposit" shall mean the delivery of securities by an insured to the director or the delivery of securities to any authorized depository, either by physical delivery of such securities or by the transfer of title to such securities by bookkeeping entry pursuant to Neb.Rev.Stat. §8-1302 and §24-604 §30-3211, Reissue Revised Statutes of Nebraska, 1943.

~~002.005 "Receipt" shall mean a receipt issued by the Department to evidence and describe securities deposited with the Department or an authorized depository.~~

002.02 6 "Custody Receipt" shall mean a receipt issued by an authorized depository to evidence and describe securities deposited with it.

~~002.007 "Insurer" shall mean stock and mutual insurance companies, reciprocal exchange, and all assessment associations except domestic assessment hail associations and those domestic assessment companies hereafter organized primarily to write coverage on farm properties against the perils of fire, lightning, windstorm and hail.~~

~~002.08 "Securities" shall mean securities eligible for deposit as prescribed by Section Neb.Rev.Stat. §44-319.01(4), R.S. 1943.~~

~~003z. Depositories.~~ The director shall maintain a list of designated authorized depositories. All securities must be deposited directly with an authorized depository. No securities may be delivered to the director.

~~The Director shall, from time to time, designate in writing, banks, and trust companies to act as authorized depositories to receive and hold for safekeeping purposes any securities deposited pursuant to Sections Neb.Rev.Stat. §§44-319.01 to through 44-319.13, R.S. 1943, Section 44-321, R.S. 1943 §44-821, §44-822, §44-825, §44-32,139, and §44-308, §44-3808, §44-718 and Section §44-150 R.S. 1943. A listing of authorized depositories shall be made available to any insured upon request.~~

~~All negotiable securities must be deposited directly with any authorized depository. No such securities shall be mailed or otherwise delivered to the Department, which is hereby authorized to accept for deposit and safekeeping purposes, non-negotiable securities only.~~

004. Registered securities.

~~004.01 All registered securities, except stock certificates, which are deposited with the Department or any authorized depository, must be registered as follows:~~

~~“Director of Insurance, Trustee for the benefit of all policyholders of the United States of (Insurer)(City), (State) under Nebraska law.”~~

~~Director of Insurance for State of Nebraska, Trustee for the benefit of all the policyholders in the United States, of the~~

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~~(Name of insurance company) (City) (State)~~

~~under Sections Neb.Rev.Stat. §44-319.02 and §44-319.05, R.R.S. 1943.~~

**NOTE:**

~~1. Domestic assessment associations required to deposit securities under the rule, except health and accident assessment associations, must substitute Section Neb.Rev.Stat. §44-319.03 for Section §44-319.02.~~

~~2. Health and accident assessment associations must substitute Section Neb.Rev.Stat. §44-8217 R.R.S. 143 for Section §44-319.03.~~

~~004.02 Stock certificates may be deposited only with the Department. Stock certificates will be accepted for deposit only if accompanied by (1) a certified copy of a resolution of the Board of Directors authorizing the official depositing said stock certificates to execute assignments thereof and (2) an assignment (on form separate from certificate) as nearly as practical to the following~~

~~For value received, \_\_\_\_\_  
(Name of Company)~~

~~hereby sell, assign and transfer unto Director of Insurance for the State of Nebraska, Trustee for all the policyholders in the United States of~~

~~\_\_\_\_\_ ( ) shares of \_\_\_\_\_~~

~~(Name of Company) \_\_\_\_\_ (Type of Stock)~~

~~Capitol Stock of the \_\_\_\_\_~~

~~(Name of Corporation)~~

~~standing in \_\_\_\_\_ name on the books of said \_\_\_\_\_~~

~~\_\_\_\_\_ (Name of Corporation)~~

~~represented by Certificate No. \_\_\_\_\_ herewith and do hereby irrevocably~~

~~constitute and appoint \_\_\_\_\_ attorney to transfer said stock on the books of substitution in the premises.~~

~~Dated \_\_\_\_\_~~

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
Official

Witnessed:  
\_\_\_\_\_

~~The signature of the official executing the assignment must be properly guaranteed.~~

~~004.023 In the event~~ If any insurer deposits securities with the Department or authorized depository pursuant to under the laws or requirements of any other state, or other government, territory, possession, province or country, such securities need not be deposited in accordance with subparagraphs sections 004.01 and 004.02 above, but may be registered or deposited in any the manner required or permitted set by the or requirements of such other state, territory, possession, province or country government. unless it has deposited the maximum amount required by law with this state, in accordance with the provisions of this rule, for the benefit of all of its policyholders in the United States. An insurer may deposit securities exceeding the minimum amount set under Nebraska law if it satisfies the requirement of making a deposit under the laws of another state or government.

~~0045. Amount. Unless required by the laws of another state, territory, possession, province or country in which the insurer is licensed, no insurer shall deposit any securities the value of which substantially exceeds one hundred thousand dollars (\$100,000), as determined by the admissible value in the insurer's filed annual statement; Provided however, insurers may deposit securities exceeding one hundred thousand dollars (\$100,000), if by so doing they obviate the necessity of making a deposit in another state, territory, possession, province or country, or add some privilege, right or facility for doing business therein.~~

~~0056. Deposit procedure. The Department shall issue its receipt for all securities deposited with it. It shall also issue its receipt for securities deposited with authorized depositories provided the insurer procures and submits to the Department a custody receipt from such authorized depository which permits release and provides for disposition only upon request at the direction of the Director. Said custody receipt may be neither negotiable nor transferable and must so indicate.~~

0057 Withdrawal - procedure - generally. Securities deposited with either the Department or an authorized depository shall be released only upon surrender of the department receipt. In the event such receipt is lost or destroyed, an officer of the insurer must file an affidavit stating the reasons for failure to surrender said receipt, and indicating the securities to be released. In the event the insurer desires to withdraw only a portion of the securities described on a department receipt, the Department upon surrender of said receipt or upon filing of the affidavit aforementioned, shall issue its receipt for the securities remaining on deposit as described in the Department's copy of the applicable receipt. Except as hereinafter provided, no securities shall be released if the aggregate value of all securities on deposit will fall below the amount required by law, until an equivalent amount is first deposited with the Department or an authorized depository. In the event of maturity or other good cause being shown, the Department may release securities on deposit, even though the aggregate value will fall below the amount required by law upon the condition that the securities released will be sold, and the proceeds

reinvested in securities to be immediately deposited with the Department or an authorized depository.

~~008. Withdrawal—losses. Securities withdrawn to pay losses will be released only upon formal application of the insurer and upon written order of the Director.~~

~~006 9. Foreign insurers—r Retaliation. Whenever If the laws of another jurisdiction or other government require a domestic insurersance companies to deposit securities in the state with a governmental or other agency in such jurisdiction, this Department shall require all similar insurerssance companies domiciled in that state or said other jurisdiction to file a corporate surety bond acceptable to the Department in favor of the Department of Insurance, State of Nebraska conditioned upon the same purposes and requirements of the laws of said other jurisdiction. In lieu of a corporate surety bond, said companies shall deposit securities with an- the authorized depositoriesy as described in section 003. of this rule acceptable to the Department in favor of the Department of Insurance conditioned upon the same purposes and requirements of the laws of said other jurisdiction.~~

~~010. Insurance. To protect against loss to securities on deposit with the Department, the Director shall purchase insurance written and issued on the national standard form prescribed as "Money and Securities Broad Form Policy" in a sufficient amount, in no event to exceed twenty five thousand (\$25,000) dollars.~~

~~00910. Current deposits. Insurers whose deposits do not presently comply with the provisions of this rule must bring said deposits into compliance herewith as soon as practical.~~

~~0101. Eligible securities. All domestic insurers are urged whenever possible to utilize only United States Government bonds for deposit purposes. However, other eligible securities will be accepted.~~



## **Title 210 - NEBRASKA DEPARTMENT OF INSURANCE**

### **Chapter 26 - DEPARTMENT ADMINISTRATION, PRACTICE AND PROCEDURE**

001. Statutory authority. This rule is promulgated under Neb.Rev.Stat. § 84-909.01

002. Application of Nebraska Attorney General Model Rules for Practice and Procedure. The Nebraska Department of Insurance follows the Model Rules adopted by the Attorney General for regulations and procedures governing hearings on contested cases, declaratory orders, petitions for rulemaking, and petitions for negotiated rulemaking found at 53 NAC 1 through 53 NAC 5, unless specific statutes or regulations require a different procedure or standard in particular circumstances. These regulations shall not create a right of appeal or right to contest an agency action which is not specifically authorized by statute or these regulations.

001. Forms and pleadings. There are no prescribed forms for practice and procedure before the Department of Insurance. All forms and pleadings filed or submitted by parties appearing before the Department shall be in writing on 8 1/2" x 11" paper. Protests, interventions, or other responsive pleadings shall specifically set forth the grounds upon which they are made, state the interest of the protestant or intervenor in proceedings, be subscribed and filed with the Department five (5) days prior to date of hearing.

002. Notice and hearing. When any party interested in any rule or decision of the Department initiates a hearing, after filing a written request with the Director, the Director shall issue a written notice to all interested parties by certified or registered mail. Notice shall state the time, place, and issues to be heard, and all such notices shall be mailed at least ten (10) days prior to the date of the hearing. In the case of the mailing of a notice to a corporation, the notice shall be sent to the principal place of business thereof, directed to the attention of its president, other chief executive officer, or its attorney. Except as otherwise provided for by statute, or by these regulations, the time and place of hearing will be set upon the instigation of any proceeding by the Director at his discretion.

003. Continuances. Any party desiring a continuance shall, immediately upon receipt of the notice of hearing, or as soon thereafter as the facts necessitating such continuance come to his knowledge, notify the Director in writing of said desire, and stating in said notification the reasons for such continuance. The Director may require any party to submit affidavits in support of such request. The Director may grant a continuance for good cause shown, and may at any time order a continuance on his own motion.

004. Conduct of hearings. All hearings will be conducted by the Director or by such hearing officer as the Director previously shall have designated. The Director or hearing officer will open the proceedings, take appearances, act on pleadings not previously filed and motions made during the hearing, administer oaths to witnesses, receive the evidence in order specified hereafter, rule on motions or objections relating to testimony and evidence, interrogate any witnesses to ascertain additional facts, and close the proceedings. In any proceeding initiated by

~~the Department of Insurance, even though the same is in the posture of an order to show cause, evidence shall be presented first by the Department, then by the Respondent, and then rebuttal by the Department. In any proceeding initiated by any party other than the Department, evidence shall be presented first by the initiating party, then by any protestants and intervenors, then by the Department, and then rebuttal by the initiating party. Every party shall have the right to cross-examination of all witnesses who testify.~~

~~005. Discovery. Any party shall be afforded the same discovery procedures before the Director as are available in the District courts of this State, including, but not limited to taking of depositions, the submission of interrogatories, and the production of documentary evidence. When requested to do so by any party, the Director shall issue subpoenas to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony, and cause the deposition of witnesses either residing within or without the state to be taken in the same manner prescribed by law for the taking of depositions in civil actions in the District Court, provided that the requesting party tender to the Director in advance all the necessary fees in connection therewith. The Director may on his own motion issue such subpoenas and cause such depositions to be taken. Whenever any person shall fail, refuse, or neglect to obey such subpoena or to give evidence concerning any matter pertaining to a hearing conducted by the Department of Insurance, the Director or hearing officer may forthwith report in writing such disobedience and file such subpoena with proof of service thereof in the district court of the county in which such hearing is being had if in session, and if not, then with any judge of such court. The Subpoena for witnesses to testify or for the production of papers or documents shall be issued under the seal of the Department, and may be served either by the sheriff or constable, or by the Director mailing by certified mail, return receipt requested. The subpoena shall be served not less than five (5) days before the hearing date of the cause upon which the witness is required to attend.~~

~~Every person who shall be obliged to attend as a witness pursuant to a subpoena or any other witness called to testify in any proceeding by the Department, shall be entitled to his actual reasonable expenses, and the same fees and mileage as are paid state employees. Such fees shall be paid by the Department out of the Insurance Department Cash Fund. Compensation of all other witnesses shall be made by the party calling such witnesses.~~

~~006. Evidence. In ruling evidentiary matters, the Director or hearing officer shall be guided by the evidentiary provisions of Section Neb.Rev.Stat. §84-914 R.R.S., 1943. All material offered into evidence shall stand as admitted unless objection thereto is timely made and sustained by the Director or hearing officer.~~

~~All exhibits introduced into evidence shall be confined to a maximum size of 8 1/2 by 14, or be placed upon paper which may be folded into such size, with the exception of insurance company annual statements. Large charts of exhibit may be utilized, but such exhibits which are to be made a part of the record shall be of the size previously specified. All exhibits received into evidence shall remain a part of the permanent record. In the event that any exhibits are to be withdrawn, duplicate copies must be available to be substituted at the time to the hearing.~~

~~All proceedings shall be recorded by a notary public. A copy of the official record, or any part of said record, shall be furnished to any interested party at its expense upon written request thereof. The Department and interested parties may provide for the payment of the expense of transcribing said official record, by mutual agreement.~~

~~The Department may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports, of material so judicially noticed. They shall be afforded an opportunity to contest the facts so noticed.~~

~~007. Submission of briefs. Submission of briefs may be required by the Director or hearing officer. Any party desiring to submit a brief may do so by indicating such desire at the close of the hearing. The time at which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the Director or hearing officer.~~

~~008. Findings and order. Upon the completion of any hearing, the Director or hearing officer shall take the case under advisement. The Director will subsequently render his decision in the form of a written order, accompanied by findings of fact and conclusions of law. All parties to the proceeding and their attorneys of record shall be notified of said order in accordance with Section Neb.Rev.Stat. §84-915 R.R.S., 1943.~~

~~009. Appeal. Any party desiring to appeal an order of the Director shall do so in accordance with Sections Neb.Rev.Stat. §84-917 and §84-918.~~