

DEPARTMENT OF JUSTICE

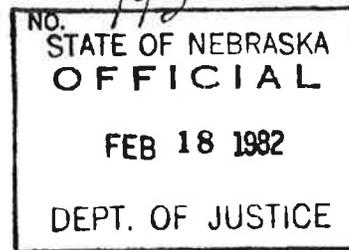
STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

February 16, 1982

Senator Samuel K. Cullan
Member of the Legislature
807 State Capitol
Lincoln, Nebraska 68509



Dear Senator Cullan:

You have asked the effect of the addition of Section 9 to LB 421 now pending on Final Reading on the calendar of the Legislature. That section provides: "The Department of Health shall adopt rules and regulations to implement all provisions of this act." We have concluded the effect of that section is minimal as discussed below.

LB 421 would make it a crime for an insurer to fail or neglect to make a report to the Department of Health about any violations of the Uniform Licensing Law of which such insurer had knowledge. It would limit access to such reports insofar as they are privileged communications but would subject them to investigatory and enforcement provisions of the Uniform Licensing Law. No general purpose is recited in the bill and no specific guidelines are given for the Department to follow in making rules and regulations to implement all provisions of the act.

The general rule is that the Legislature may not delegate legislative powers to an administrative agency. However, there is no unconstitutional delegation of legislative authority where the Legislature by statute defines a crime and provides a penalty therefor, but delegates to administrative or executive authority the implementation of the details thereof and clearly designates limitations and standards. State v. Cutright, 193 Neb. 303 (1975).

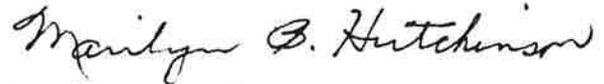
Thus, any rule made by the Department pursuant to Section 9 of LB 421 if enacted would be limited to clarifying procedures for reporting violations and for getting access to reports once they are filed with the Department. The bill

Senator Samuel Cullan
February 16, 1982
Page -2-

could probably be implemented without such rules if it is otherwise valid.

Sincerely yours,

PAUL L. DOUGLAS
Attorney General



Marilyn B. Hutchinson
Assistant Attorney General

MBH:jmf

t1

cc: Patrick O'Donnell
Clerk of the Legislature