

LEGISLATIVE BILL 52

Approved by the Governor April 20, 1979

Introduced by DeCamp, 40

AN ACT relating to insurance; to authorize legal service insurance corporations; to provide duties; to set standards for legal expense insurers; and to provide for severability.

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

Section 1. This act shall be interpreted liberally to (1) encourage the development of more effective and economical ways of providing legal services, (2) ease the burden of necessary legal expenses, and (3) aid in maintaining a high level of competence and adherence to professional standards in the performance of legal services.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance;

(2) Department shall mean the Department of Insurance;

(3) Insurer shall mean any person, as defined in section 49-801, Revised Statutes Supplement, 1978, authorized to conduct an insurance business as an insurer in this state, including corporations organized under sections 12 and 13 of this act; and

(4) Legal expense insurance shall mean the assumption of a contractual obligation to provide specified legal services or to reimburse for specified legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. Legal expense insurance includes arrangements that create reasonable expectations of enforceable rights, but does not include the provision of or reimbursement for legal services incidental to other insurance coverages.

Sec. 3. The insurance laws of this state, including this act, do not apply to:

(1) Retainer contracts made by attorneys-at-law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters;

(2) Plans providing no benefits other than consultation and advice in connection with or in combination with referral services;

(3) The furnishing of limited legal assistance on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, education, or similar relationship;

(4) The furnishing of legal assistance by labor unions and other employee organizations to their members in matters relating to employment or occupation;

(5) Employee welfare benefit plans to the extent that state laws are superseded by Section 514 of the Employee Retirement Income Security Act of 1974; or

(6) Automobile club service contracts which supply incidental or limited legal services or reimbursement for legal services in automobile related matters.

Sec. 4. (1) No person may conduct a legal expense insurance business in this state unless authorized to do so by the director.

(2) Subsection (1) of this section shall not apply to any person issuing group, blanket, or franchise policies if fewer than twenty-five per cent of the certificate holders or insureds reside in this state and the person is regulated to a comparable extent by another state in which a larger number of certificate holders or insureds reside.

Sec. 5. (1) Legal expense insurance may be written as individual, group, blanket, or franchise insurance. Each contractual obligation for legal expense insurance shall be evidenced by a policy. Each person insured under a group policy shall be issued a certificate of coverage.

(2) No policy or certificate of legal expense insurance may be issued in this state unless a copy of the form has been filed with and approved by the director.

Sec. 6. The director may disapprove a policy or certificate form of an insurer whose purpose according to its articles of incorporation is restricted to transacting legal expense insurance and business reasonably related thereto if he or she finds that it:

(1) Is unfair, unfairly discriminatory, misleading, or encourages misrepresentation or misunderstanding of the contract;

(2) Provides coverage or benefits or contains other provisions that would endanger the solidity of the insurer;

(3) Provides rates which are excessive, inadequate, or unfairly discriminatory; or

(4) Is contrary to law.

Sec. 7. (1) Provider contracts, and changes thereto, made between an insurer, whose purpose is restricted to transacting legal expense insurance and business reasonably related thereto, and providing attorneys or other providers of services covered by the legal expense insurance policy shall be filed with the director and shall not become effective until approved by the director.

(2) Legal expense insurers shall annually report to the director, in such detail as the director reasonably requires, the number and geographical distribution of attorneys and other providers of services covered by the legal expense insurance policy with whom they maintain contractual relations and the nature of the relations. For individual insurers or groups of insurers the directors may require more frequent reports.

Sec. 8. (1) An insurer whose purposes according to its articles of incorporation are restricted to transacting legal expense insurance and business reasonably related thereto shall deposit with the director securities eligible for deposit by an insurance company, which shall have at all times a market value of not less than one hundred fifty thousand dollars, or as provided by subsection (7) of this section. A deposit under this section shall be held to assure the faithful performance of the insurer's obligations to its policyholders.

(2) In lieu of any deposit of securities required under subsection (1) of this section, the insurer may file with the director a surety bond in the amount of one hundred fifty thousand dollars, or as provided by

subsection (7) of this section. The bond shall be one issued by an insurance company authorized to do business in the State of Nebraska. The bond shall be for the same purposes as the deposit in lieu of which it is filed, and it shall be subject to the director's approval. No such bond shall be cancelled or subject to cancellation unless at least thirty days' advance notice thereof, in writing, is filed with the director.

(3) Securities or bond posted by the insurer pursuant to subsection (1) or (2) of this section shall be for the benefit of and subject to action thereon in the event of insolvency of the insurer by any person or persons sustaining an actionable injury due to the failure of the insurer to faithfully perform its obligations to its policyholders.

(4) The State of Nebraska shall be responsible for the safekeeping of all securities deposited with the director under this section. The securities shall not, on account of being in this state, be subject to taxation.

(5) The depositing insurer shall, during its solvency, have the right to exchange or substitute other securities of a like quality and value for securities on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(6) The deposit or bond shall be maintained unimpaired as long as the insurer continues in business in this state. Whenever the insurer ceases to do business and furnishes to the director proof satisfactory to the director that the insurer adequately provided for all of its obligations to its policyholders or contract holders in this state, the director shall release the deposited securities to the parties entitled thereto, on presentation of the director's receipts for such securities, or shall release any bond filed with it in lieu of such deposit.

(7) The director may reduce the minimum market value of securities required under subsection (1) of this section or the amount of the surety bond required under subsection (2) of this section if he or she finds that the reduction is justified by:

(a) The terms and number of existing contracts with subscribers;

(b) Support by financially sound public or private organizations or agencies;

(c) Agreements with lawyers or paralegal personnel for the providing of legal services;

(d) Agreements with other persons for insuring the payment of the cost of legal services or the provision for alternative coverage in the event the insurer is unable to perform its obligations; or

(e) Other reliable financial guarantees.

(8) No part of the securities or bond to be filed under this section shall be supplied directly or indirectly by dues payments made for the purpose of meeting requirements to practice a profession.

Sec. 9. An insurer shall not contract itself to practice law in any manner, nor shall the insurer control or attempt to control the attorney in the exercise of his or her professional judgment.

Sec. 10. Insurers may contract with other insurers, including insurance companies organized under any of the laws of the State of Nebraska, for partial or total administrative services, for joint participation through contractual agreements, or otherwise cede or accept legal expense insurance obligations from such insurers on the whole or any part of such legal expense insurance obligations. Such contract forms, documents, treaties, or agreement forms shall be filed with and approved by the director to be in accordance with the plan of operation of such insurer prior to their effectiveness. The director may issue rules and regulations concerning such participation contracts and agreements with insurers.

Sec. 11. The director shall report to the Counsel for Discipline of the Nebraska State Bar Association, or to any person designated by the Supreme Court to receive attorney grievances from the public, any information of possible instances of overcharging for legal services, incompetence, or violations of the code of professional responsibility by lawyers who provide services in connection with a legal expense insurance policy.

Sec. 12. (1) Two or more persons may organize a legal service insurance corporation under this section.

(2) The articles of incorporation of a not-for-profit corporation shall conform to the requirements applicable to not-for-profit corporations under the Nonprofit Corporation Act and the articles of incorporation of a corporation for profit shall conform

to the requirements applicable to corporations for profit under the Nebraska Business Corporation Act, except that:

(a) The name of the corporation shall indicate that legal services or indemnity for legal services is to be provided;

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto;

(c) The articles shall state whether members or other providers of services may be required to share operating deficits, either through assessments or through reductions in the compensation for services rendered. They shall also state the general conditions and procedures for deficit sharing and any limits on the amount of the deficit to be assumed by each individual member or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Sec. 13. The incorporators shall file with the director an application for a certificate of authority to do business, which shall include or have attached the following:

(1) The names, addresses, and occupations of all incorporators, proposed directors, and officers;

(2) For corporate incorporators, their articles and by-laws and a list of the names, addresses, and occupations of their directors and principal officers and, for the three most recent years, their annual statements and reports;

(3) The proposed articles and by-laws;

(4) All agreements relating to the corporation to which any incorporator, or proposed director or officer is a party;

(5) The amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;

(6) The proposed compensation of directors and officers;

(7) The forms to be used for any contracts between the corporation and its members or other persons concerning the provision of services to insureds;

(8) The proposed minimum amount of surplus;

(9) The plan for conducting the insurance business including all of the following:

(a) The geographical area in which business is intended to be done;

(b) The types of legal expense insurance intended to be written including specification whether and to what extent indemnity rather than service benefits are to be provided;

(c) The proposed marketing methods; and

(d) To the extent required by the director, the proposed method for the establishment of premium rates and other charges to policyholders; and

(10) Such other documents or information as the director reasonably requires.

Sec. 14. The director shall issue a certificate of authority to a corporation organized under the provisions of sections 12 and 13 of this act if:

(1) He or she finds that all requirements of law have been met;

(2) He or she is satisfied that all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy, competent, and collectively have the competence and experience to engage in the particular insurance business proposed; and

(3) He or she is satisfied that the business plan is consistent with the interests of the corporation's potential insureds and of the public.

Sec. 15. Upon the issuance of the certificate of authority, and upon the issuance of the certificate of incorporation by the Secretary of State, the legal existence of the corporation organized under sections 12 and 13 of this act shall begin, the articles and by-laws

shall become effective, the proposed directors and officers shall take office, and the corporation shall be authorized to transact legal service insurance in this state subject to the requirements and restrictions of this act.

Sec. 16. A corporation organized under sections 12 and 13 of this act shall invest its funds as provided by Chapter 44 and its investments shall be valued as provided by Chapter 44. The investments shall exceed its liabilities and reserves except for claim liability covered by contracting attorney guarantees and it shall be a continuing condition of licensing by the director that such solvency be maintained.

Sec. 17. A corporation organized under sections 12 and 13 of this act shall maintain the reserves necessary for the sound operation of the business, including unearned premium reserves. The amount and manner of calculating such reserves shall be determined by rule of the director.

Sec. 18. An insurer whose purposes according to its articles of incorporation are restricted to transacting legal expense insurance and business reasonably related thereto shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association described in Chapter 44, article 24, or the Nebraska Life and Health Insurance Guaranty Association described in Chapter 44, article 27. The Nebraska Property and Liability Insurance Guaranty Association Act and the Life and Health Insurance Guaranty Association Act shall not be applicable to legal expense insurance issued by an insurer whose purposes according to its articles of incorporation are restricted to transacting legal expense insurance and business reasonably related thereto.

Sec. 19. Any person may advance to a corporation organized under sections 12 and 13 of this act on a contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this act. Such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval by the director. Repayment shall only be made out of operating surplus after reserve requirements have been met. No assessments against insureds may be levied for the purpose of repayment and no dividends may be paid to members as long as interest or repayment installments remain unpaid.

Sec. 20. All corporations organized under sections 12 and 13 of this act shall be governed by such other laws regulating the business of insurance and profit and nonprofit corporations as do not conflict with this act.

Sec. 21. A corporation organized under sections 12 and 13 of this act shall not enter into an exclusive agency contract or management contract, unless the contract is first filed with the director and approved within thirty days of filing or such reasonable extended period as the director may specify by notice given within thirty days. The director may disapprove the contracts submitted if he or she finds that the contract contains provisions which impair the interests of the insurer's participants, creditors, or the public in this state.

Sec. 22. The Department of Insurance may appoint any deputy or examiner or other persons who shall have the power of visitation and examination into the affairs of any corporation organized under sections 12 and 13 of this act. Such deputy or examiner shall have free access to all the books, papers, and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions, and condition of such corporation.

Sec. 23. Any dissolution or liquidation of a corporation organized under sections 12 and 13 of this act shall be conducted under the supervision of the department which shall have all powers with respect thereto under the provisions of law with respect to the dissolution and liquidation of an insurance company. Provisions of section 44-127.25, Revised Statutes Supplement, 1978, shall be applicable to the liquidation of a corporation organized under sections 12 and 13 of this act.

Sec. 24. Each corporation organized under sections 12 and 13 of this act shall annually on March 1 file with the department its statement for the preceding calendar year, and in the form prescribed by the director, showing all premiums received by it for the issuance of legal expense insurance in this state. Such annual statements may use accounting principles common to its business, but such accounting principles must enable the director to ascertain whether the reserve required by section 17 of this act has been maintained.

Sec. 25. Any corporation organized under sections 12 and 13 of this act neglecting to file the annual statement in the form and within the time provided

by section 24 of this act shall forfeit one hundred dollars for each day during which such neglect continues, and, upon notice by the director to that effect, its authority to do business in this state shall cease while such default continues.

Sec. 25. In addition to an annual statement, the director may require of licensees, under oath and in the form prescribed by him or her, such additional regular or special reports as he or she may deem necessary to the proper supervision of corporations under sections 12 and 13 of this act.

Sec. 27. Any corporation organized under sections 12 and 13 of this act shall also be subject to the taxation provisions of Chapter 77, article 9, to the extent that direct writing premiums are subject to taxation under such article.

Sec. 28. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.