

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB863

Hearing Date: Tuesday January 18, 2022
Committee On: Banking, Commerce and Insurance
Introducer: Williams
One Liner: Change provisions relating to the Insurance Holding Company System Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

Oral Testimony:

Proponents:

Senator Matt Williams
Eric Dunning
Robert Bell

Representing:

Introducer
Nebraska Department of Insurance
Nebraska Insurance Federation

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 863 (Senator Williams) is to adopt the latest National Association of Insurance Commissioners' (NAIC) updates to the Insurance Holding Company System Act. The revisions allow for compliance with an international agreement entered into between the United States and the European Union and the United Kingdom, respectively, by mandating the filing of a group capital calculation by certain international insurers. The revisions also mandate that certain insurers conduct a liquidity stress test and report the results to the Department of Insurance. Finally, the revisions satisfy an NAIC accreditation requirement that mandates passage of the NAIC model law by November 7, 2022. The legislation would provide, section by section, as follows:

Section 1 revises Neb. Rev. Stat. Sec. 44-2121 by adding the definitions necessary for implementation of a group capital calculation and liquidity stress test.

Section 2 revises Neb. Rev. Stat. Sec. 44-2132 to mandate the filing of an annual group capital calculation and liquidity stress test results with the Nebraska Department of Insurance or other controlling jurisdiction by certain insurers subject to registration requirements imposed by the Insurance Holding Company System Act.

Section 3 revises Neb. Rev. Stat. Sec. 44-2138 by adding language maintaining the confidentiality of the group capital calculation and liquidity stress test results by exempting such results from inclusion as documents subject to disclosure under the public records act, prohibits the disclosure of such results by the Department except as explicitly authorized, and broadly prohibits public disclosure of such results in any media format.

Section 4 cleans up a reference that is no longer accurate after the addition of the definitions contained in section 1.

Section 5 is the amendatory repealer.

Explanation of amendments:

The committee amendments (AM1913) contain the provisions of LB863 (sections 21 to 23 and 37 of AM1913) and also the provisions of six other bills that were heard by the Banking, Commerce and Insurance Committee and each made a part of the committee amendments on an 8-0 vote. Those bills are as follows:

1. LB728 (Lindstrom) Adopt the Travel Insurance Act (Sections 1 to 10 of AM1913)

This bill would enact 10 new sections to be known as the Travel Insurance Act to provide a comprehensive statutory framework, administered by the Department of Insurance, for the sale of Travel Insurance. The bill would provide for appropriate licensure and registration requirements. The bill would also apply to travel assistance services and cancellation fee waivers as expressly provided. The bill would provide, section by section, as follows:

Section 1 would provide for a named Act: the Travel Insurance Act.

Section 2 would provide for legislative purpose.

Section 3 would provide for definitions: (1) "Aggregator site;" (2) "Blanket travel insurance;" (3) "Cancellation fee waiver;" (4) "Department;" (5) "Director;" (6) "Eligible group;" (7) "Fulfillment materials;" (8) "Group travel insurance;" (9) "Limited lines travel insurance producer;" (10) "Offer and disseminate;" (11) "Primary certificate holder;" (12) "Primary policy holder;" (13) "Travel administrator" (a person who underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims in connection with travel insurance); (14) "Travel assistance services" (noninsurance services); (15) "Travel insurance" (insurance coverage for personal risks incident to planned travel); (16) "Travel protection plan" (a plan that provides travel insurance, travel assistance services, cancellation fee waivers, or any combination thereof); and (17) "Travel retailer" (a business entity that makes, arranges, or offers planned travel and may offer and disseminate travel insurance to customers on behalf of and under the direction of a limited lines travel insurance producer).

Section 4 would require licensure of limited lines travel insurance producers. This section would require limited lines travel insurance producers to maintain a register of each travel retailer that offers travel insurance on behalf of the limited lines travel insurance producer. This section would require that a travel retailer offering and disseminating travel insurance shall make brochures or other written materials available to a prospective purchaser that provide the identity and contact information of the insurer and the limited lines travel insurance producer and explain that purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

Section 5 would provide requirements for a travel insurer to pay the premium tax on the travel insurance premiums.

Section 6 would provide that travel protection plans may be offered at one combined price and may include travel insurance, travel assistance services, and cancellation fee waivers as long as descriptions and disclosures are included.

Section 7 would provide that persons offering travel insurance to residents of this state are subject to the Unfair Insurance Trade Practices Act and provides that marketing blanket travel insurance as free is an unfair trade practice. This section would require that information provided to consumers must be consistent with the policy. This section would outline what

information shall be disseminated to the consumer and when fulfillment documents shall be delivered to the consumer.

Section 8 would provide that no person shall act as a travel administrator for travel insurance unless licensed as a property and casualty insurance producer, a managing general agent, or a third-party administrator. This section would provide that an insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer.

Section 9 would provide that travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, and in certain circumstances may be classified and filed under an accident and health line of insurance.

Section 10 would provide the Department of Insurance with rule and regulation authority.

Section 24 would amend section 44-4052 of the Insurance Producers Licensing Act to adjust an internal reference to an outright repealed section.

Section 12 would provide for an operative date of January 1, 2023 for sections 1 to 10 and 24 of this bill.

Section 41 would provide for the outright repeal of section 44-4068 of the Insurance Producers Licensing Act which contains provisions regarding travel insurance made obsolete by sections 1 to 10 of this bill.

Oral Testimony:

Proponents:

Senator Brett Lindstrom, Introducer

Duke deHaas, UStiA / Allianz

Eric Dunning, Nebraska Department of Insurance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

2. LB737 (Bostar) Adopt the Primary Care Investment Act (Sections 11 to 17 of AM1913)

This bill would enact 7 new sections to be known as the Primary Care Investment Act to provide for the creation of the Primary Care Investment Council. The council shall analyze data collected by the federal government in accordance with the Federal Consolidated Appropriations Act of 2021, and other data sources to:

1. Develop an appropriate definition of primary care investment;
2. Measure the current level of primary care investment, measured as a part of overall health care spending, by public and private payors in Nebraska;
3. Conduct a comparison of spending on primary care services and health outcomes in Nebraska with surrounding states and nationally;

4. Develop a target level of primary care investment by public and private payors in Nebraska;
5. Recommend strategies to achieve the target level of primary care investment through alternative payment models;
6. Identify the public health benefits and estimated cost savings that would result from meeting the target level of primary care investment through alternative payments models; and
7. Identify solutions to barriers for Nebraska residents from accessing primary care and for health payors and medical providers from investing in primary care.

The Primary Care Investment Council would have fifteen voting and two ex officio nonvoting members. The voting members would be appointed by the Governor and would consist of representatives of primary care physicians, behavioral health providers, hospitals, academia, health providers who are not primary care physicians or hospitals, health insurers, large employers, small employers, and organizations that facilitate health information exchange, and also a health care consumer advocate. The nonvoting members would be the Director of Insurance and the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

The Primary Care Investment Council shall convene a meeting at least once a year through 2028. Each November 1 beginning in 2023 until 2028, the council shall prepare and the department shall electronically submit a report to the Legislature and the Governor which contains the Primary Care Investment Council's findings. The council would terminate on July 1, 2029.

The committee amendment version of this bill removes duties required of the Department of Insurance for the purpose of eliminating a General Fund impact.

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

Josue Gutierrez, Nebraska Academy of Family Physicians, Metro Omaha Medical Society

Brad Meyer, Bluestream Health

David Watts, Nebraska Medical Association

Jeremiah Blake, Blue Cross Blue Shield of Nebraska

Robert Bell, Nebraska Insurance Federation

Opponents: None

Neutral:

Eric Dunning, Nebraska Department of Insurance

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

3. LB739 (Bostar) Change provisions relating to insurance coverage of colorectal cancer screenings (Section 20 of AM1913)

This bill would amend section 44-7,102 of the insurance laws to provide that health policies, certificates, contracts, and plans shall include screening coverage for a colorectal cancer examination and laboratory tests for cancer for any

nonsymptomatic covered person beginning at age 45 rather than age 50.

Section 44-7,102 provides that such screening coverage shall include a maximum of one screening fecal occult blood test annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. This bill proposes no changes in these provisions.

The bill would apply to individual and group sickness and accident insurance policies, certificates, and subscriber contracts and to self-funded employee benefit plans to the extent not preempted by federal law.

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

Alan Thorson, Nebraska Cancer Coalition, Nebraska Medical Association, ASC CAN, Friends of Public Health in Nebraska, Nebraska Rural Health Association

Robert Bell, Nebraska Insurance Federation

Jeremiah Blake, Blue Cross Blue Shield of Nebraska

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

4. LB955 (Murman) Prohibit certain insurance practices relating to a person's status as a living organ donor (Section 18 of AM1913)

This bill would make it unlawful to: decline or limit coverage for life, disability or long-term care insurance; preclude a person from donating all or part of an organ as a condition of receiving life, disability or long-term care insurance; and consider the status of a person as a living organ donor in determining rates for coverage and otherwise discriminate against a person under any life, disability, or long-term care insurance policy due to the status of such person as a living organ donor.

Violation of this act would be unfair trade practice in the business of insurance, subject to the Unfair Insurance Trade Practices Act.

This bill as amended by the committee amendments would make it unlawful for an insurer to deny insurance coverage, cancel insurance coverage, or determine the price or premium for, refuse to issue, or otherwise vary any term or condition of a life insurance policy, disability insurance policy, or long-term care insurance policy solely on the basis of an individual's status as a living organ donor.

These provisions would define a living organ donor as an individual who has donated all or part of an organ and is not deceased.

Oral Testimony:

Proponents:

Senator Dave Murman, Introducer

Robert Bell, Nebraska Insurance Federation
Tyler Laughlin, American Council of Life Insurers
Kellie Harry, Mutual of Omaha
Opponents: None
Neutral: None

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams
Nay:
Absent:
Present Not Voting:

5. LB957 (Flood) Change provisions of the Insurers Investment Act (Sections 25 to 36 of AM1913)

This bill would update the Insurer Investment Act found at Neb. Rev. Stat. sections 44-5101 through 44-5154. As described in section 44-5102, the purpose of the Act is to protect policyholders and others by establishing 'standards, requirements, and limitations for the investment of insurers' The Act applies to Nebraska domestic insurers financially regulated by the Nebraska Department of Insurance.

The Act was first adopted in 1991 and while it has been occasionally amended, it has not experienced a wholesale update in the past thirty years. The overarching intent of LB 957 is to modernize the thirty-year-old statute to be in line with current standard insurance industry investment practices, provide increased investment flexibility while maintaining appropriate risk protections, and make other technical changes to the Act.

Section 1 (section 25 of AM1913) would amend section 44-5103 to provide a definition of 'primary credit source,' which is utilized in section 6 of the bill and means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a claim for full payment.

Section 2 (section 26 of AM1913) would amend section 44-5105 to require the Board of Directors of an insurer to at least annually review and, if necessary, revise its annual written investment plan.

Section 3 (section 27 of AM1913) would amend section 44-5120 to remove outdated language and to increase the percentage of authorized investments under the lending of securities statute from ten to twenty percent of its admitted assets.

Section 4 (section 28 of AM1913) would amend section 44-5120.01, which relates to repurchase and reverse repurchase agreements, to correct references and definitions of both repurchase and reverse repurchase agreements, and to update the statute in numerous locations related to acceptable collateral in these types of transactions.

Section 5 (section 29 of AM1913) would amend section 44-5132 to permit the investment in highly rated interest only real estate securities.

Section 6 (section 30 of AM1913) would amend section 44-5137, related to foreign securities to clarify what is considered to not be a foreign security if the primary credit source is in the United States or Canada, to increase the amount of investments in foreign securities from twenty to twenty-five percent, and to clarify requirements related to the investment in bonds or notes secured by mortgage on real estate located outside the United States or Canada.

Section 7 (section 31 of AM1913) would amend section 44-5139 to eliminate minimum size of an investment trust an insurer may invest in and to remove a cross reference limitation on these types of investments contained in the common stock and equities investment section 44-5141.

Section 8 (section 32 of AM1913) would amend section 44-5141 related to insurer investments in common stock and equities investment by permitting investments in partnerships wholly owned by an insurer and by eliminating certain limitations in investments by creating a more general limitation.

Section 9 (section 33 of AM1913) would amend section 44-5143 to modernize the statute to reflect the current state of mortgage investing by insurers. The changes include amending language related to investments in mortgages where the lender agrees not to terminate the leasehold interest, construction loans, mortgages with balloon payments that meet certain criteria, mortgages with multiple holders, and second mortgages.

Section 10 (section 34 of AM1913) would amend section 44-5144 to update insurer investments in real estate by expanding the type entities an insurer may utilize to make real estate investments, updating investing rules related to real estate with leases, expanding the location of certain types of real estate investment, and by updating the law related to real estate development.

Section 11 (section 35 of AM1913) would amend section 44-5149 to permit an insurer to permit partial offsets of derivative instruments and to permit the calculation of aggregate statement value and potential exposure by calculated net of collateral posted or received.

Section 12 (section 36 of AM1913) would amend section 44-5153 to expand the investments not otherwise permitted in the Act for investments exceeding five hundred million dollars of admitted assets or one hundred percent of policyholder surplus. The statute is also amended to exclude assets held by a ceding insurer as security supporting certain reinsurance agreements.

Oral Testimony:

Proponents:

Jesse Ferguson (on behalf of Senator Flood), Introducer

Jennifer Webb, Pacific Life Insurance

Robert Bell, Nebraska Insurance Federation

Tad Fraizer, Mutual of Omaha

Eric Dunning, Nebraska Department of Insurance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

6. LB1042 (Bostar) Change provisions relating to insurance and rebates (Section 19 of AM1913)

This bill would amend section 44-361 which prohibits improper rebates by insurance companies, agents, or brokers. The bill would provide that the offer or provision of value-added products or services at no or reduced cost when such products or services are not specified in the policy shall not be prohibited rebates if the product or service:

1. Relates to the insurance coverage; and
2. Is primarily designed to satisfy one or more of the following; (a) Provide loss mitigation or loss control; (b) Reduce claim costs or claim settlement costs; (c) Provide education about liability risks or risk of loss to persons or property; (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk; (e) Enhance health; (f) Enhance financial wellness through items such as education or financial planning services; (g) Provide post-loss services; (h) Incent behavioral changes to improve the health or reduce that risk of death or disability of a customer; or (i) Assist in the administration of employee or retiree benefit insurance coverage.

The bill would provide the Director of Insurance with rule and regulation authority.

An insurance company or an agent or broker may provide a product or service as part of a pilot testing program if the Department of Insurance is notified and does not object.

An insurance company or an agent or broker may offer or give noncash gifts, items, or services if the customer is not required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service. An insurance company or an agent or broker may conduct drawings or raffles as long as there is no financial cost to entrants to participate if the customer is not required to purchase, continue to purchase, or renew a policy in order to participate in the drawing or raffle or in exchange for the drawing or raffle prize.

For purposes of this bill, "customer" is defined as an applicant, a policyholder or potential policy holder, a certificate holder or potential certificate holder, or an insured or potential insured.

Oral Testimony:

Proponents:

Eliot Bostar, Introducer

Robert Bell, Nebraska Insurance Federation

Korby Gilbertson, American Property Casualty Insurance Association

Coleen Nielsen, Nebraska Insurance Information Service

Jenn Neilan, Independent Insurance Agents of Nebraska

Eric Dunning, Nebraska Department of Insurance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams

Nay:

Absent:

Present Not Voting:

