

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 966**

Introduced by Lathrop, 12.

Read first time January 11, 2022

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to adopt the Discretionary
- 2 Clause Prohibition Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 5 of this act shall be known and may be  
2 cited as the Discretionary Clause Prohibition Act.

3           Sec. 2. The purpose of the Discretionary Clause Prohibition Act is  
4 to ensure that health insurance benefits and disability income protection  
5 coverage are contractually guaranteed and to avoid the conflict of  
6 interest that occurs when the health carrier or insurer responsible for  
7 providing benefits has discretionary authority to decide what benefits  
8 are due.

9           Sec. 3. For purposes of the Discretionary Clause Prohibition Act:

10           (1) Director means the Director of Insurance;

11           (2) Disability income protection coverage means a policy, contract,  
12 certificate, or agreement that provides for periodic payments, weekly or  
13 monthly, for a specified period during the continuance of disability  
14 resulting from either sickness or injury or a combination of sickness and  
15 injury;

16           (3) Health care services means services for the diagnosis,  
17 prevention, treatment, cure, or relief of a health condition, illness,  
18 injury, or disease;

19           (4) Health carrier means an entity:

20           (a)(i) Subject to the insurance laws and rules and regulations of  
21 this state; or

22           (ii) Within the jurisdiction of the director; and

23           (b) That contracts or offers to contract with any of the following  
24 to provide, deliver, arrange for, pay for, or reimburse any of the costs  
25 of health care services:

26           (i) A sickness and accident insurance company;

27           (ii) A health maintenance organization;

28           (iii) A nonprofit hospital;

29           (iv) A health service corporation; or

30           (v) Any other entity providing a plan of health insurance, health  
31 benefits, or health services; and

1           (5) Person means:

2           (a) An individual, a corporation, a partnership, an association, a  
3 joint venture, a joint stock company, a trust, or an unincorporated  
4 organization;

5           (b) Any similar entity; or

6           (c) A combination of any such entities.

7           Sec. 4. The Discretionary Clause Prohibition Act shall not impose  
8 any requirement or duty on any person other than a health carrier or  
9 insurer that offers disability income protection coverage.

10          Sec. 5. (1) No policy, contract, certificate, or agreement offered  
11 or issued in this state by a health carrier to provide, deliver, arrange  
12 for, pay for, or reimburse any of the costs of health care services shall  
13 contain a provision purporting to reserve discretion to the health  
14 carrier to interpret the terms of the contract or to determine  
15 eligibility for benefits.

16          (2) No policy, contract, certificate, or agreement offered or issued  
17 in this state providing for disability income protection coverage shall  
18 contain a provision purporting to reserve discretion to the insurer to  
19 interpret the terms of the contract or to determine eligibility for  
20 benefits.

21          Sec. 6. If any section in this act or any part of any section is  
22 declared invalid or unconstitutional, the declaration shall not affect  
23 the validity or constitutionality of the remaining portions.