

LEGISLATIVE BILL 299

Approved by the Governor March 15, 1985

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Pappas, 42;
Labeledz, 5; Schmit, 23; Beyer, 3;
Habermann, 44

AN ACT relating to insurance; to amend sections 44-107, 44-203.01, 44-401, 44-409, and 44-417, Reissue Revised Statutes of Nebraska, 1943; to provide for credit for reinsurance as prescribed; to harmonize provisions; to change the frequency of examinations of domestic companies; to eliminate provisions relating to reinsured risk deductions; and to repeal the original sections, and also sections 44-416 and 44-418, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if:

(1) The reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this state or to an assuming insurer which is licensed in at least one state which employs standards regarding credit for reinsurance substantially similar to sections 1 to 4 of this act and such insurer conforms to the standards of solvency which would be required if such insurer were licensed in this state, including the capital and surplus requirements of section 44-214 or 44-219;

(2) The reinsurance is ceded to an assuming insurer which maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers, and their assigns and successors in interest. The assuming insurer shall report annually to the Director of Insurance information required by the director. The director may utilize the National Association of Insurance Commissioners Annual Statement form. This information shall enable the director to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a

trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than one hundred million dollars, and the group shall make available to the director an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

Such trust shall be established in a United States bank or trust company which is a member of the Federal Reserve System in a form approved by the director. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director. Such trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustees of the trust shall report to the director in writing the balance of the trust and the trust's investments at the end of the preceding year and shall certify the date of termination of the trust, if planned, or certify that the trust shall not expire prior to the following December 31; or

(3) The reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1) or (2) of this section, but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or regulation of such jurisdiction.

Sec. 2. If the assuming insurer is not licensed to transact insurance in this state, the credit permitted by subdivisions (1) and (2) of section 1 of this act shall not be allowed unless the assuming insurer agrees in the reinsurance agreements (1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal, and (2) to designate the Director of Insurance or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company. This section is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an

obligation is created in the agreement.

Sec. 3. A reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of sections 1 and 2 of this act shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer providing security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held by a United States bank or trust company that is a member of the Federal Reserve System. This security may be in the form of:

- (1) Cash;
- (2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Security Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a bank or trust company that is a member of the Federal Reserve System; or
- (4) Any other form of security acceptable to the Director of Insurance.

Sec. 4. The Director of Insurance may adopt and promulgate rules and regulations necessary to carry out sections 1 to 3 of this act.

Sec. 5. That section 44-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-107. The Department of Insurance shall cause each domestic company to be examined at least once every ~~three~~ four years, and cause its affairs to be thoroughly inspected and examined to ascertain its true financial condition, its ability to meet and to fulfill its obligations, whether it has complied with the provisions of the law, and all other facts that may be required relating to its business, methods, and management, and its dealings with its policyholders. Whenever it deems it advisable, it shall cause a complete audit of the books and accounts of the company to be made by a disinterested expert accountant.

Sec. 6. That section 44-203.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-203.01. Unless in each case an insurance company maintains a reserve in an amount equal to one hundred per cent of the unearned premiums on all policies in force after deducting credit for reinsurance ~~in reputable solvent companies~~ authorized by sections 1 to 4 of this act, an insurance company (1) transacting the kinds of insurance specified in subdivision (1) of section

44-201, shall not transact any other kinds of insurance except that specified in subdivision (12) of such section, and (2) transacting one or more of the kinds of insurance specified in subdivisions (3), (4), (5), (6), (7), (8), (10), (12), and (13), of section 44-201, shall not transact the kinds of insurance specified in subdivision (1) of such section.

Sec. 7. That section 44-401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-401. In ascertaining the condition of a domestic stock fire or casualty insurance company, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination, but premium notes not past due, and unpaid premiums on policies not more than ninety days past due, shall be admitted as available resources. In ascertaining its liabilities, there shall be charged in addition to the capital stock, all outstanding claims, and a sum equal to one hundred per cent of the unearned premiums on the policies in force, after deducting credit for reinsurance in reputable solvent companies authorized by sections 1 to 4 of this act, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. In ascertaining the condition of a domestic mutual fire or casualty insurance company, other than a company licensed solely to write the class of insurance described in subdivision (3) of section 44-201, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of examination, but premium notes not past due, and unpaid premiums on policies not more than ninety days past due, shall be admitted as available resources. In ascertaining its liabilities, there shall be charged all outstanding claims and a reserve in an amount equal to one hundred per cent of the total unearned premium on all their policies in force. If the department finds this section to be impractical in ascertaining the condition of certain kinds of insurance companies, the department shall formulate such rules and regulations as it deems proper, efficient, and consistent with law. Such rules and regulations shall give due regard to the statutes, rules and regulations, and established industry practices which may be used in other states or which are approved by the National Association of Insurance Commissioners.

Sec. 8. That section 44-409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-409. In ascertaining the condition of a domestic sickness and accident insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination, but notes of policyholders not

past due, and not for a longer period than four months from the date of the policy for which they are given, and unpaid premiums on policies not more than ninety days past due, may be admitted as available resources. In ascertaining its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premium on the policies in force, after deducting credit for reinsurance in reputable, solvent companies authorized by sections 1 to 4 of this act, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy; PROVIDED, that such companies shall reserve an amount equal to the total unearned premium on all their policies in force.

Sec. 9. That section 44-417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-417. No credits such deductions specified in sections 1 to 4 of this act section 44-416 shall be made or allowed unless the contract of reinsurance provides that the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such reinsurance agreement may provide that the liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where when such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding company, its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer shall be chargeable, subject to court approval, against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

Where When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding company.

Sec. 10. That original sections 44-107, 44-203.01, 44-401, 44-409, and 44-417, Reissue Revised Statutes of Nebraska, 1943, and also sections 44-416 and 44-418, Reissue Revised Statutes of Nebraska, 1943, are repealed.