

## LEGISLATIVE BILL 593

Approved by the Governor February 11, 1986

Introduced by Barrett, 39

AN ACT relating to insurance; to amend sections 44-127.01, 44-127.03, 44-2701 to 44-2704, 44-2707 to 44-2711, 44-2713, 44-2717, and 44-2720, Reissue Revised Statutes of Nebraska, 1943; to restate purposes; to define and redefine terms; to change provisions relating to the kinds of insurance covered; to change provisions relating to the powers and duties of the association and the director; to change provisions relating to liability on covered policies; to prohibit inducements; to provide reciprocity as prescribed; to change assessment provisions; to provide for examination expenses as prescribed; to provide for the applicability of certain provisions; to change internal references; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 44-127.01 Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-127.01. (1) Within sixty days after the granting of the order of liquidation, or within such longer time as the court may direct, the liquidator shall cause notice to be published to the company's policyholders, creditors, shareholders, persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720 Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act, and all other persons interested in its assets. Such notice shall require claimants to file their claims with the liquidator together with proofs thereof within six months after the date of first publication.

(2) Within sixty days after the revocation of the certificate of authority of an insolvent foreign or alien insurance company pursuant to section 44-134, or within such longer time as the director may order, the Department of Insurance shall cause notice to be

published to the company's policyholders and persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720 Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act. Such notice shall require claimants to file their claims with the Department of Insurance together with proofs thereof within six months after the date of first publication.

Sec. 2. That section 44-127.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-127.03. Within thirty days after the date of the first publication of notice, the liquidator shall send notice of liquidation and the time for the filing of claims to the company's policyholders, persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720 Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act, creditors, shareholders, and all other persons interested in its assets, by ordinary United States mail to the last-known address of such persons, firms, or corporations as shown by the records of the company. An affidavit of such mailing shall be filed with the clerk of the court, which affidavit shall contain a statement that the provisions of this section have been complied with. In the case of an insolvent foreign or alien insurer whose certificate of authority has been revoked pursuant to the provisions of section 44-134, the department shall send such notice to the company's policyholders and to persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720 Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 3. That section 44-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2701. The purpose of the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 is to protect resident policyowners, insureds, including certificate holders under group insurance policies or contracts, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts of member insurers, subject to certain limitations, against failure in the

performance of contractual obligations due to the impairment or insolvency of the member insurer issuing such policies or contracts and to assist in the detection and prevention of insurer insolvencies. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, as limited in the act, and (2) members of the association are made subject to assessment to provide funds to carry out the purposes of the act, sections 44-2701 to 44-2720, and (3) the association is authorized to assist the Director of Insurance, in the prescribed manner, in the detection and prevention of insurer impairments.

Sec. 4. That section 44-2702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2702. As used in sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account shall mean either any of the three accounts created pursuant to the provisions of section 44-2705;

(2) Association shall mean the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Director shall mean the Director of Insurance;

(4) Contractual obligation shall mean any obligation under covered policies a policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(5) Covered policy shall mean any policy or contract or portion of such policy or contract which is not subject to assessment and for which coverage is provided under specified in section 44-2703;

(6) Impaired insurer shall mean a member insurer (a) an insurer which, after August 24, 1975, (a) is becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or (b) an insurer deemed by the director, after August 24, 1975, to be unable or potentially unable to fulfill its contractual obligations and is not an insolvent insurer or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(7) Insolvent insurer shall mean a member insurer which after August 24, 1975, becomes insolvent and with respect to which there is a final determination of insolvency by a court of competent jurisdiction;

~~(7)~~ (8) Member insurer shall mean any person authorized to transact in this state any kind of insurance business specified in section 44-2703 provided for under section 44-2703. Member insurer shall include any person whose license or certificate of authority may have been suspended or revoked, but shall not in any event include:

(a) A nonprofit hospital or medical service organization;

(b) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) An unincorporated mutual association;

(f) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(g) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(8) (9) Premiums shall mean direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. Premiums shall not include premiums and considerations on contracts between insurers and reinsurers. As used in section 44-2708, premiums are those for the calendar year preceding the determination of impairment or insolvency;

(9) (10) Person shall mean any individual, corporation, partnership, association, or voluntary organization; and

(10) (11) Resident shall mean any person who resides in this state at the time the impairment a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligations are obligation is owed; and

(12) Supplemental contract shall mean any agreement entered into for the distribution of policy or contract proceeds.

Sec. 5. That section 44-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2703. (1) The Nebraska Life and Health Insurance Guaranty Association Act Sections 44-2701 to 44-2720 shall apply to all direct life insurance policies, health insurance policies, annuity contracts,

supplemental contracts, and certificates under group policies or contracts and contracts supplemental to life and health insurance policies and annuity contracts issued anywhere by persons authorized to transact insurance or act as an insurer in this state at any time a member insurer.

(2) Sections 44-2701 to 44-2720 The Nebraska Life and Health Insurance Guaranty Association Act shall not apply to:

(a) Any portion of any policy or contract referred to in subsection (1) of this section that is not guaranteed:

(a) (b) Any such policies policy or contracts contract, or any part of such policies policy or contracts contract, under which the risk is borne by the policyholder policy or contract holder;

(b) (c) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) (d) Any such policy or contract issued by assessment associations operating under the provisions of Chapter 44, article 8, or unincorporated mutuals, or health maintenance organizations unless such organizations are controlled by an insurance company licensed by the Department of Insurance under the provisions of Chapter 44

(i) A nonprofit hospital or medical service organization;

(ii) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(iii) A fraternal benefit society;

(iv) A mandatory state pooling plan;

(v) An unincorporated mutual association;

(vi) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(vii) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment; or

(d) (e) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under the provisions of Chapter 44.

Sec. 6. That section 44-2704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2704. Sections 44-2701 to 44-2720 The Nebraska Life and Health Insurance Guaranty Association Act shall be liberally construed to effect the purposes enumerated in section 44-2701 which shall constitute an aid and guide to interpretation.

Sec. 7. That section 44-2707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2707. In addition to the powers and duties enumerated in sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act:

(1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the director at its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, are approved by the director, and are, except in cases of court-ordered conservation or rehabilitation, approved by the impaired insurer:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, all the covered policies of the impaired insurer;

(b) Provide such money, pledges, notes, guarantees, or other means as are proper to effectuate the provisions of subdivision (1)(a) of this section; and assure payment of the contractual obligations of the impaired insurer pending action under the provisions of subdivision (1)(a) of this section; and

(c) Loan money to the impaired insurer;

(2) If a foreign or alien insurer is an impaired insurer, the association may, in its discretion, or shall on order by the director after notice to the association and a hearing, prior to an order of liquidation, rehabilitation, or conservation; with respect to the covered policies of residents and subject to any conditions which are imposed by the association other than those which impair the contractual obligations of the impaired insurer, and, except in cases of court-ordered conservation or rehabilitation, which are approved by the impaired insurer and approved by the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;

(b) Provide such money, pledges, notes,

guarantees, or other means as are proper to effectuate the provisions of subdivision (2)(a) of this section, and assure payment of the impaired insurer's contractual obligations to residents pending action under the provisions of subdivision (2)(a) of this section; and

(c) Loan money to the impaired insurer;

(3) If a domestic insurer is an impaired insolvent insurer, under an order of liquidation or rehabilitation, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer residents;

(b) Assure payment of the contractual obligations of the insolvent impaired insurer to residents, including obligations to resident certificate holders of group insurance policies or contracts, regardless of the domicile of the group policy or contract holders; and

(c) Provide the protections specified in subdivisions (3)(a) and (3)(b) of this section to nonresident policy and certificate holders of such domestic insurer if (i) they are not eligible for such protections under the laws of the states in which they reside, (ii) such domestic insurer never held a license or certificate of authority in such states, and (iii) the laws of such states provide protections similar to those provided by this subdivision to the residents of this state who are policy or certificate holders of insurers domiciled in such states; and

(d) ~~(e)~~ Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties, but if the association fails to act within a reasonable period of time under this subdivision, the director shall have the powers and duties of the association under the Nebraska Life and Health Insurance Guaranty Association Act provisions of sections 44-2701 to 44-2720 with respect to such domestic impaired insolvent insurer;

(4) If a foreign or alien insurer is an impaired insolvent insurer, under an order of liquidation, rehabilitation, or conservation, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents;

(b) Assure payment of the contractual obligations of the impaired insolvent insurer to

residents, including obligations to resident certificate holders of group insurance policies or contracts regardless of the domicile of the group policy or contract holders; and

(c) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties, but if the association fails to act within a reasonable period of time under this subdivision, the director shall have the powers and duties of the association under the Nebraska Life and Health Insurance Guaranty Association Act provisions of sections 44-2701 to 44-2720 with respect to such foreign or alien impaired insolvent insurer.

The protection provided by the Nebraska Life and Health Insurance Guaranty Association Act shall not apply to the extent that guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the insolvent insurer other than this state;

(5)(a) In carrying out its duties under subdivisions (1), (2), (3), and (4) of this section, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the director:

(i) Finds that the amounts which can be assessed under the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 are less than the amounts needed to assure full and prompt performance of the impaired or insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(ii) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used; and

(b) Before being obligated under subdivisions (1), (2), (3), and (4) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the director;

(6) The association shall have no liability under the provisions of this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation, for residents of this state, protection



substantially similar to that provided by sections 44-2701 to 44-2720 for residents of other states;

(7) (6) The association may render assistance and advice to the director, upon his or her request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer;

(8) (7) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations;

(9) (8)(a) Any person receiving benefits under the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 shall be deemed to have assigned his or her rights under the covered policy to the association to the extent of the benefits received because of such act sections 44-2701 to 44-2720 whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act sections 44-2701 to 44-2720 upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer, and

(b) The subrogation rights of the association under the provisions of this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under sections 44-2701 to 44-2720 such act;

(10) (9) The contractual obligations of the impaired or insolvent insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by subdivision (5) of this section,

but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars the aggregate liability of the association with respect to any one life shall not exceed: (a) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance; (b) one hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or (c) three hundred thousand dollars for all life insurance, health insurance, and annuity benefits, including net cash surrender and net cash withdrawal values; and

~~(11)~~ (10) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under the provisions of section 44-2708;

(c) Borrow money to effect the purposes of sections 44-2701 to 44-2720 the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under sections 44-2701 to 44-2720 the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims; and

(g) Exercise, for the purposes of the act sections 44-2701 to 44-2720 and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer; and

(h) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the

association.

Sec. 8. That section 44-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2708. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses, ~~not related to a particular impaired insurer including expenses for examinations conducted under the authority of subdivision (2) of section 44-2711.~~ Class A assessments may be made whether or not related to a particular impaired or insolvent insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under ~~the provisions of~~ section 44-2707 with regard to an impaired or insolvent domestic insurer; and

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under ~~the provisions of~~ section 44-2707 with regard to an impaired or insolvent foreign or alien insurer.

(3)(a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(b) Class A ~~B~~ and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact the business of insurance at any time, in the proportion that the

premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

(d) (c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act. Classification of assessments under the provisions of subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two per cent of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth pursuant to the provisions of subsection (4) of this section, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is

necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance specified under the provisions of sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act, to consider the amount reasonably necessary to meet its assessment obligations under sections 44-2701 to 44-2720 such act.

(8) The association shall issue to each insurer paying an assessment under the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 a certificate of contribution in a form prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as a nonadmitted asset in such form and for such amount, if any, and period of time as the director may approve.

Sec. 9. That section 44-2709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2709. (1)(a) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the director.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty days following August 24, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the provisions of sections 44-2701 to 44-2720 Nebraska Life and Health Insurance Guaranty Association Act. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated in ~~sections 44-2701 to 44-2720~~ the Nebraska Life and Health Insurance Guaranty Association Act:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under the ~~provisions of~~ section 44-2706;

(c) Establish regular places and times for meetings of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors shall be made and submitted to the director;

(f) Establish any additional procedures for assessments pursuant to ~~the provisions of~~ section 44-2708; and

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under ~~the provisions of~~ subdivision ~~(11)~~ (10)(c) of section 44-2707 and ~~the provisions of~~ section 44-2708, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation made under this subsection shall take effect only with the approval of both the board of directors and the director and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by ~~sections 44-2701 to 44-2720~~ the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 10. That section 44-2710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2710. In addition to the powers and duties enumerated in ~~sections 44-2701 to 44-2720~~ the Nebraska

Life and Health Insurance Guaranty Association Act:

(1) The director shall:

(a) Notify the board of directors of the existence of an impaired or insolvent insurer not later than three days after a determination of impairment or insolvency is made or he or she receives notice of impairment or insolvency;

(b) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(c) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under ~~sections 44-2701 to 44-2720~~ the act;

(d) In any liquidation or rehabilitation proceeding under Nebraska law involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the director shall be appointed conservator; and

(e) Transmit to the association all claims on covered policies timely filed with him or her pursuant to ~~the provisions of~~ sections 44-127.01 to 44-127.05. The association shall ~~thereupon~~ then be considered to have been designated as the director's representative pursuant to ~~the provisions of~~ section 44-127.07, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by ~~sections 44-2701 to 44-2720~~ the act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in sections 44-127.05 to 44-127.11; for the determination of claims;

(2) The director may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative,

the director may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five per cent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month;

(3) Any action of the board of directors or the association may be appealed to the director by any member insurer if such appeal is taken within thirty days of the action being appealed. Any final action or order of the director shall be subject to judicial review in a court of competent jurisdiction; and

(4) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify all interested persons of the effect of sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 11. That section 44-2711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2711. To aid in the detection and prevention of insurer impairments or insolvencies:

(1) The board of directors shall, upon majority vote, notify the director of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations;

(2) The board of directors may, upon majority vote, request that the director order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The director may conduct such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the director may designate. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the director from his or her obligation to comply with the provisions of subdivision (3) of this section. The director shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the director, but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or



potentially unable to meet its contractual obligations;

(3) The director shall report to the board of directors when he or she has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations;

(4) The board of directors may, upon majority vote, make reports and recommendations to the director upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents;

(5) The board of directors may, upon majority vote, make recommendations to the director for the detection and prevention of insurer impairments or insolvencies; and

(6) The board of directors shall, at the conclusion of any insurer impairment or insolvency in which the association carried out its duties under sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act or exercised any of its powers under sections 44-2701 to 44-2720 such act, prepare a report on the history and causes of such impairment, or insolvency based on the information available to the association, and submit such report to the director.

Sec. 12. That section 44-2713, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2713. (1) Nothing in the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties pursuant to the provisions of section 44-2707. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities as provided in section 44-2714.

(3) For the purpose of carrying out its obligations under sections 44-2701 to 44-2720 the Nebraska Life and Health Insurance Guaranty Association Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision ~~(9)~~ (8) of section 44-2707. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by sections 44-2701 to 44-2720 the act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired or insolvent insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by the Nebraska Life and Health Insurance Guaranty Association Act sections 44-2701 to 44-2720 in the sale of insurance.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b), (c), and (d) of

this subsection.

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions he such person received. Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions he such person would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer.

(e) If any person liable under subdivision (c) of this subsection is insolvent, all its affiliates of such person at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Sec. 13. That section 44-2717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2717. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its directors, officers, agents, or employees, the association or its agents or employees, members of the its board of directors, or the director or his or her representatives for any action taken by them in the performance of their powers and duties under the provisions of sections 44-2701 to 44-2720 Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 14. No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio station or television station, or in any other

way any advertisement, announcement, or statement, written or oral, which uses the existence of the Nebraska Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Nebraska Life and Health Insurance Guaranty Association Act, except that this section shall not apply to the Nebraska Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

Sec. 15. Any insurer under an order of liquidation, rehabilitation, or conservation on the effective date of this act shall be subject to the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the day prior to the effective date of this act.

Sec. 16. That section 44-2720, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2720. Sections 44-2701 to 44-2720 and sections 14 and 15 of this act shall be known and may be cited as the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 17. That original sections 44-127.01, 44-127.03, 44-2701 to 44-2704, 44-2707 to 44-2711, 44-2713, 44-2717, and 44-2720, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 18. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.