

LEGISLATIVE BILL 302

Approved by the Governor February 20, 1987

Introduced by Rogers, 41

AN ACT relating to insurance; to amend sections 44-142 and 77-912, Reissue Revised Statutes of Nebraska, 1943, and sections 13-203, 13-206, 13-207, 44-2407, 44-2716, and 44-4233, Revised Statutes Supplement, 1986; to change provisions relating to premium and related retaliatory taxes; to provide an exception to the disposition of certain funds; 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 13-203, Revised Statutes Supplement, 1986, be amended to read as follows:

13-203. As used in the Community Development Assistance Act, unless the context otherwise requires:

(1) Business firm shall mean any business entity including a corporation, fiduciary, sole proprietorship, partnership, or corporation having an election in effect under subchapter S of the Internal Revenue Code subject to the state income tax imposed by section 77-2715 or 77-2734.02 or an insurance company paying a ~~tax premium or related retaliatory taxes~~ in this state pursuant to section 44-150 or 77-908;

(2) Community services shall mean any type of the following in a community development area: (a) Employment training; (b) human services; (c) medical services; (d) physical facility and neighborhood development services; (e) recreational services or activities; (f) educational services; or (g) crime prevention activities, including, but not limited to, the instruction of any individual in the community development area that enables him or her to acquire vocational skills; counseling and advice; emergency services; community, youth, day care, and senior citizen centers; inhome services; home improvement services and programs; and any legal enterprise which aids in the prevention or reduction of crime;

(3) Department shall mean the Department of Economic Development;

(4) Director shall mean the Director of

Economic Development;

(5) Community development area shall mean any village, city, county, or part thereof which has been designated by the department as an area of chronic economic distress;

(6) Community assistance shall mean furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement of any part or all of a community development area;

(7) Community betterment organization shall mean any organization performing community services or offering community assistance in a community development area and to which contributions are tax deductible under the provisions of the Internal Revenue Service of the United States Department of the Treasury; and

(8) Area of chronic economic distress shall mean an area of the state which exceeds state averages in a majority of the following categories:

- (a) Unemployment;
- (b) Percentage of the population below the median family income;
- (c) Vacant and substandard housing stock;
- (d) Depressed housing valuations; and
- (e) Crime.

Sec. 2. That section 13-206, Revised Statutes Supplement, 1986, be amended to read as follows:

13-206. (1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 13-205 taking into account the economic need level and the geographic distribution of the population of the community development area. The director shall also adopt and promulgate rules and regulations concerning the amount of the tax credit for which a program shall be certified. The tax credits shall be available only for those contributions to a certified program which may qualify as a charitable contribution deduction on the federal income tax return filed by the business entity making such contribution. The decision of the department to approve or disapprove all or any portion of a proposal shall be in writing. If the proposal is approved, the maximum tax credit allowance for the certified program shall be stated along with the approval. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under ~~section~~ sections 44-150 and 77-908 shall be transmitted to the

Director of Insurance.

(2) For all business firms eligible for the credit allowed by section 13-207, except for insurance companies paying an annual tax premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908, the Tax Commissioner shall provide for the manner in which the credit allowed by section 13-207 shall be taken and the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regulations for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by section 13-207 to insurance companies paying an annual tax premium and related retaliatory taxes in this state pursuant to ~~section~~ sections 44-150 and 77-908 shall be taken and the forms on which such credit shall be allowed. The Director of Insurance shall adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying an annual tax premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908 a credit for the credit provided by section 13-207 and allowed by the Director of Insurance.

Sec. 3. That section 13-207, Revised Statutes Supplement, 1986, be amended to read as follows:

13-207. (1) Any business firm which plans to or which has contributed to a certified program of a community betterment organization may apply to the department for authorization for a tax credit for the contribution to the certified program in an amount up to but not exceeding the maximum tax credit allowed by the department. The maximum tax credit allowed by the department for each approved business firm shall be in an amount which does not exceed forty per cent of the total amount contributed by the business firm during its taxable year to any programs certified pursuant to section 13-205. The director shall send a copy of the approved application which includes the amount of the tax credit to be allowed and a certification by the department that the contribution has been paid as proposed by the business firm to the Tax Commissioner who shall grant a tax credit against any tax due under sections 77-2715 and 77-2734.02 and to the Director of Insurance who shall grant a tax credit against any tax premium and related retaliatory taxes due under ~~section~~ sections 44-150 and 77-908.

(2) No tax credit shall be granted to any business firm in this state pursuant to the Community

Development Assistance Act for activities that are a part of its normal course of business. Any tax credit balance may be carried over and applied against the business firm's tax liability for the next five years immediately succeeding the tax year in which the credit was first allowed.

Sec. 4. That section 44-142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-142. Every agent who places, effects, or delivers any insurance or insurance policy, as provided in sections 44-139 to 44-142, 44-145, and 44-147 to 44-147.06, shall annually, on or before February 15 in each year, make and file with the Department of Insurance a verified statement upon a form prescribed by the department, which shall exhibit the true amount of all such business transacted during the year ending on December 31 next preceding the making thereof. The agent shall, at the time such statement is submitted, pay to the department the tax on such business in the same manner as other foreign companies a tax of three per cent on the total gross amount of direct writing premiums received by the agent on such business and the fire insurance tax prescribed in section 81-523. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

For purposes of this section, unless the context otherwise requires, direct writing and premiums shall be as defined in section 77-907.

Sec. 5. That section 44-2407, Revised Statutes Supplement, 1986, be amended to read as follows:

44-2407. (1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers separately for each account in the amounts necessary to pay the obligations of the association under section 44-2406, the expenses of handling covered claims, the cost of examinations under sections 44-2412 and 44-2413, and other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in proportion that the net direct written premiums of such member insurer, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date the member insurer becomes an insolvent insurer. After an initial assessment has been

made for an insolvency, any subsequent assessments for that insolvency may be calculated in the same manner as the initial assessment and may use the same calendar year's net direct written premiums as were used in determining the original assessment. The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member company in any one year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. Except for such administrative assessment, no member insurer may be assessed in any year on any account an amount greater than one per cent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member companies that received larger assessments by virtue of such deferment or, in the discretion of any such company, credited against future assessments. No member insurer may pay a dividend to stockholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility, except that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and such other expenses of the association as are authorized by the Nebraska Property and Liability Insurance Guaranty Association Act; and

(d) Issue to each insurer paying an assessment under this section a certificate of contribution in appropriate form and terms as 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. Such certificate of contribution shall be shown by the insurer in its financial statement as an admitted asset. The insurer shall have the right to show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years not to exceed the following: One hundred per cent for the calendar year of issuance; eighty per cent for the first calendar year after the year of issuance; sixty per cent for the second calendar year after the year of issuance; forty per cent for the third calendar year after the year of issuance; and twenty per cent for the fourth calendar year after the year of issuance. The insurer shall offset not to exceed the amount written off by it in a calendar year under this section against its premium and related retaliatory tax liability imposed by section sections 44-150 and 77-908 to the state accrued with respect to business transacted in such year. Should the association recover any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by section sections 44-150 and 77-908, such recovered sum shall be paid by the association to the Director of Insurance who shall handle such funds in the same manner as provided in Chapter 77, article 9.

(2) The association may:

- (a) Appear in, defend, and appeal any action;
- (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
- (c) Borrow funds necessary to effect the purposes of the Nebraska Property and Liability Insurance Guaranty Association Act in accord with the plan of operation;
- (d) Sue or be sued;
- (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of such act;
- (f) Perform such other acts as are necessary or proper to effectuate the purpose of such act; and
- (g) Refund to the member insurers in proportion to the contribution of each member insurer to any account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association in the account exceed the liabilities of that account as estimated by the board of directors for the coming year.

Sec. 6. That section 44-2716, Revised Statutes Supplement, 1986, be amended to read as follows:

44-2716. (1) Unless a longer period has been allowed by the director, a member insurer shall, at its option, have the right to show a certificate of contribution as a nonadmitted asset in the form approved by the director pursuant to subsection (8) of section 44-2708, at percentages of the original face amount approved by the director, for calendar years not to exceed the following:

(a) One hundred per cent for the calendar year of issuance;

(b) Eighty per cent for the first calendar year after the year of issuance;

(c) Sixty per cent for the second calendar year after the year of issuance;

(d) Forty per cent for the third calendar year after the year of issuance;

(e) Twenty per cent for the fourth calendar year after the year of issuance; and

(f) Zero per cent for the fifth calendar year after the year of issuance and thereafter.

(2) The insurer may offset the amount written off by it in a calendar year under subsection (1) of this section against its premium and related retaliatory tax liability to this state pursuant to ~~section~~ sections 44-150 and 77-908 accrued with respect to business transacted in such year.

(3) Any sums acquired by refund pursuant to subsection (6) of section 44-2708 from the association which have previously been written off by contributing insurers and offset against premium and related retaliatory taxes as provided in subsection (2) of this section and are not then needed for purposes of Chapter 44 shall be paid by the association to the director who shall handle such funds in the same manner as provided for in section 77-912.

Sec. 7. That section 44-4233, Revised Statutes Supplement, 1986, be amended to read as follows:

44-4233. Any insurer subject to premium and related retaliatory tax liability imposed by section 44-150 or 77-908 may offset assessments paid to the pool by such insurer in a calendar year against its tax liability for that year.

Sec. 8. That section 77-912, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-912. The Director of Insurance shall transmit one half of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer and one half of such taxes paid to the General Fund promptly upon completion of his or her audit and examination and in no event later than ~~June 1, 1986,~~ and May 1 of each year, except that all fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be transmitted to the State Treasurer and credited to the Fire Insurance Tax Fund. thereafter-

Sec. 9. That original sections 44-142 and 77-912, Reissue Revised Statutes of Nebraska, 1943, and sections 13-203, 13-206, 13-207, 44-2407, 44-2716, and 44-4233, Revised Statutes Supplement, 1986, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.