

LEGISLATIVE BILL 700

Approved by the Governor April 11, 1988

Introduced by Goodrich, 20; Remmers, 1; Schmit, 23;
Conway, 17

AN ACT relating to the Nebraska Property and Liability Insurance Guaranty Association Act; to amend section 44-2403, Reissue Revised Statutes of Nebraska, 1943, and section 44-2406, Revised Statutes Supplement, 1986; to redefine terms; to change a provision relating to the determination of claims; and to repeal the original sections.

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

Section 1. That section 44-2403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2403. As used in ~~sections 44-2401 to 44-2418~~ the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account shall mean any one of the three accounts created by ~~the provisions of~~ section 44-2404;

(2) Director shall mean the Director of Insurance or his ~~or her~~ duly authorized representative;

(3) Association shall mean the Nebraska Property and Liability Insurance Guaranty Association created by ~~the provisions of~~ section 44-2404;

(4)(a) Covered claim shall mean an unpaid claim, ~~excluding one for unearned premiums~~, which has been timely filed with the liquidator as provided for in section 44-127.01, and which arises out of and is within the coverage of an insurance policy to which ~~sections 44-2401 to 44-2418~~ apply the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and ~~(a) (i)~~ (i) the claimant or insured is a resident of this state at the time of the insured event, or ~~(b) (ii)~~ (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after the effective date of this act. Nothing in this section shall be construed to supersede.

abrogate, or limit the common law ownership of accounts receivable for earned premium, unearned premium, or unearned commission.

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a policy deductible or self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. Subdivision (4)(b) of this section shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after September 2, 1977;

(6) Member insurer shall mean any person licensed to write any kind of insurance to which sections 44-2401 to 44-2418 apply the Nebraska Property and Liability Insurance Guaranty Association Act applies by the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under the provisions of Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which sections 44-2401 to 44-2418 apply the Nebraska Property and Liability Insurance Guaranty Association Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, association, voluntary

organization, or reciprocal insurance exchange; and
 (9) Insurance shall mean those contracts defined in section 44-102.

Sec. 2. That section 44-2406, Revised Statutes Supplement, 1986, be amended to read as follows:

44-2406. (1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member company becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, ~~or~~ before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of such dates, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for that amount of each covered claim which is in excess of one hundred dollars and is less than ten thousand dollars per policy.

(2) The director shall transmit to the association all covered claims timely filed with him or her pursuant to sections 44-127.01 to 44-127.05. The association shall thereupon be considered to have been designated the director's representative pursuant to 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 the Nebraska Property and Liability Insurance Guaranty Association 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.

(3) In the case of claims arising from bodily injury, sickness, or disease, including death resulting

therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself or herself had he or she not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident, or disability insurance, or under any salary or wage continuation program under which he or she is entitled to benefits, or from his or her employer in the form of workers' compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his or her rights to any such benefits shall forfeit all rights which he or she may have by the provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(4) A third party having a covered claim against any insured of an insolvent member insurer may file such claim with the director pursuant to sections 44-127.01 to 44-127.05, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim, unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent member company does not afford coverage, or unless the claimant shall, within thirty days from the date of filing his or her claim with the director, file files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

Sec. 3. That original section 44-2403, Reissue Revised Statutes of Nebraska, 1943, and section

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44-2406, Revised Statutes Supplement, 1986, are repealed.