

LEGISLATIVE BILL 279

Approved by the Governor May 25, 1989

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-2002, 44-2006, 44-3503, 44-4216, 44-4217, 44-4220, 44-4222, 44-4227, and 44-4228, Reissue Revised Statutes of Nebraska, 1943, and section 44-3904, Reissue Revised Statutes of Nebraska, 1943, as amended by section 244, Legislative Bill 92, Ninety-first Legislature, First Session, 1989; to change certificate of authority requirements; to change a fee for docketing certain foreign decrees; to exempt certain service contracts from insurance provisions; to change continuing education requirements relating to title insurance licensees; to change provisions relating to the Comprehensive Health Insurance Pool; to provide requirements for payments for pharmacy services; to provide operative dates; 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 44-2002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2002. (1) It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the director. This section shall not apply to:

(a) The lawful transaction of surplus lines insurance;

(b) The lawful transaction of reinsurance by insurers;

(c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;

(d) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or

losses;

(e) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities when the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and when the policyholder is domiciled or otherwise has a bona fide situs;

~~(f) Transactions in this state involving any policy of insurance or annuity contract issued prior to December 25, 1969;~~

~~(g) (f) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection, and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy; or~~

~~(h) (g) Transactions in this state involving contracts of insurance issued to one or more industrial insureds, which is hereby defined as an insured, which procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified licensed insurance consultant, whose aggregate annual premiums for insurance on all risks, other than workers' compensation insurance, total at least twenty-five one hundred thousand dollars, and who has at least twenty-five fifty full-time employees.~~

(2) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is ~~deemed to shall~~ constitute the transaction of an insurance business in this state. The venue of an act committed by mail is ~~is shall be~~ at the point where the matter transmitted by mail is delivered and takes effect. ~~Unless the context otherwise requires, insurer~~ Insurer, as used in this section, shall include all corporations, associations, partnerships, and individuals, engaged as principals in the business of insurance and ~~shall also includes~~ include interinsurance exchanges and mutual benefit societies:

(a) The making of or proposing to make, as an insurer, an insurance contract;

(b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to

any other legitimate business or activity of the guarantor or surety;

(c) The taking or receiving of any application for insurance;

(d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;

(e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

(g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or

(h) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

(3)(a) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority.

(b) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of any insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

Sec. 2. That section 44-2006, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2006. The Attorney General upon request of the Director of Insurance may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the director.

(1) As used in this section, ~~unless the context otherwise requires-~~

(a) Reciprocal state shall mean any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States; against any insurer incorporated or authorized to do business in such state or territory;

(b) Foreign decree shall mean any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein in such reciprocal state, against any insurer incorporated or authorized to do business in this state; and

(c) Qualified party shall mean a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(2) The Director of Insurance shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(3) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk, upon verifying with the Director of Insurance that the decree or order qualifies as a foreign decree, shall treat the foreign decree in the same manner as a decree of a district court of this state. A foreign decree so filed ~~has~~ shall have the same effect and shall be deemed as a decree of a district court of this state, ~~and is~~ shall be subject to

the same procedures, defenses, and proceedings for reopening, vacating, or staying as a decree of a district court of this state, and may be enforced or satisfied in like manner.

(4)(a) At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the defendant.

(b) Promptly upon the filing of the foreign decree and the affidavit, the clerk of the court shall mail notice of the filing of the foreign decree to the defendant at the address given and to the Director of Insurance and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the Director of Insurance and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed.

(c) No execution or other process for enforcement of a foreign decree filed hereunder under this section shall issue until thirty days after the date the decree is filed.

(5)(a) If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(b) If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(6) Any person filing a foreign decree shall pay to the clerk of the district court twenty-five dollars the docket fee established in section 33-106. Fees for ~~docketing~~, transcribing, or other enforcement proceedings shall be as provided for decrees of the district court.

Sec. 3. That section 44-3503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

44-3503. No person shall transact, in any manner, a service contract business in this state without a valid certificate of authority from the director. Any person without a certificate of authority who ~~shall transact,~~ transacts in any manner, a service contract business in this state shall be deemed an unauthorized insurer and shall be subject to, the Uniform Unauthorized Insurers Act in addition to penalties provided in sections 44-3501 to 44-3519. Such sections , the Uniform Unauthorized Insurers Act, Chapter 44, article 20- Sections 44-3501 to 44-3519 shall not apply to or in any way prevent:

(1) The giving of usual performance guaranties by either the manufacturer or seller of any product as long as no identifiable charge is made in conjunction with such guaranty and as long as no liability is created in any third party;

(2) The selling of mechanical breakdown insurance written by an insurer authorized to transact such insurance business;

(3) The offering of a service contract on a new home when such contract is underwritten by an insurer licensed to do business in this state if the insurance policy underlying such program has been filed with and approved by the department;

(4) The issuance of service contracts by a manufacturer or retailer covering products actually sold or leased by such manufacturer or retailer when such manufacturer or retailer maintains service facilities and staff or arranges for authorized facilities and staff which ~~shall~~ will be solely responsible for providing service, maintenance, repair, or replacement. In limited circumstances such manufacturer or retailer may provide reimbursement to the consumer for service obtained by the consumer. The issuance of such contracts shall not be subject to Chapter 44;

(5) The issuance or extension of service contracts by a repair facility, other than a motor vehicle repair facility, when such repair facility has served as the authorized service facility for the manufacturer or retailer, or when the repair facility has performed repairs on the product to be covered by the service contract. The issuance of such contracts shall not be subject to Chapter 44; ~~or~~

(6) The selling, furnishing, or making available of motor club memberships or the providing of motor club services for motor club members; or

(7) The issuance or extension in this state of

service contracts covering gas or electric appliances and heating or cooling systems by a regulated natural gas or electric utility. The issuance of such contracts shall not be subject to Chapter 44.

Sec. 4. That section 44-3904, Reissue Revised Statutes of Nebraska, 1943, as amended by section 244, Legislative Bill 92, Ninety-first Legislature, First Session, 1989, be amended to read as follows:

44-3904. All licensees qualified to solicit property and casualty insurance shall be required to complete twenty-four hours of approved continuing education activities in each two-year period. All licensees qualified to solicit assessment association insurance shall be required to complete twelve hours of approved continuing education activities in each two-year period. Licensees qualified to solicit only crop insurance, or only fidelity and surety insurance, or only title insurance shall be required to complete three hours of approved continuing education activities in each two-year period. Licensees qualified to solicit any other lines of insurance shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the required hours of approved continuing education activities for each line of insurance in which he or she is licensed as a resident agent or broker, except that no licensee shall be required to complete more than twenty-four cumulative hours in any two-year period. Licensees who are neither agents nor brokers shall be required to complete twenty-four hours of continuing education activities in each two-year period. Evidence of completion for the current two-year period shall be retained by each licensee and submitted to the department when the requirements of this section have been met.

Sec. 5. That section 44-4216, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4216. There is hereby created a nonprofit entity to be known as the Comprehensive Health Insurance Pool. All insurers authorized to issue or provide health insurance in this state on or after September 6, 1985, shall be members of the pool. The pool shall be managed by a board of directors composed of nine directors. The board shall at all times, to the extent possible, include at least two representatives of

domestic insurance companies, one representative of a health maintenance organization, one representative of a health agency which is involved in advocating for persons with special health care needs, and one representative of the general public. The director shall adopt and promulgate rules and regulations to establish eligibility and selection criteria for the representative of the general public and for the representative of the health agency.

Sec. 6. That section 44-4217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4217. The director shall, prior to November 15, 1985, give notice to all insurers of the time and place for the initial organizational meetings of the pool. The pool members shall select by December 31, 1985, the initial board of directors, except the representative of the general public and the representative of the health agency who shall be appointed by the director. The board shall select one or more insurers to serve as administering insurer pursuant to section 44-4223. The selection of the board of directors and the administering insurer shall be subject to the approval of the director.

If, by December 31, 1985, the board is not selected, the director shall appoint the initial board and appoint an administering insurer.

Sec. 7. That section 44-4220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4220. The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact the business of health insurance and, in addition thereto, the power to carry out the provisions and purposes of the Comprehensive Health Insurance Pool Act, including the specific authority to:

(1)(a) Enter into contracts as are necessary or proper, including the authority, with the approval of the director, to enter into contracts with similar pools from other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions; and

(b) Enter into contracts, with the approval of the director, with any physician, hospital, or other person licensed or otherwise authorized in this state to furnish health care services for arranging a health care plan as defined in section 44-3206 or for participating

in an insurance arrangement as defined in section 44-4104;

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against pool members;

(3) Take such legal action as necessary to avoid the improper issuance of coverage provided by or through the pool;

(4) Establish appropriate rates and rate schedules, expense allowances, agents' solicitation and referral fees, claim reserves and formulas, and any other actuarial functions appropriate to the operation of the pool;

(5) Assess members of the pool at the end of each calendar year and make advance interim assessments as may be reasonable and necessary to provide for losses resulting from claims incurred under the act and for administrative, organizational, and interim operating expenses to assure the financial stability of the pool. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year. Assessments shall be due and payable within thirty days of receipt of the assessment notice;

(6) Issue policies of insurance in accordance with the requirements of the plan of operation and the act and, with the approval of the director, refuse to renew all policy forms for a class of contract and offer a conversion privilege to any person insured by the pool;

(7) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the pool;

(8) Borrow money to effectuate the purposes of the act. Any notes or other evidence of indebtedness of the pool not in default shall be legal investment for insurers and may be carried as admitted assets; and

(9) Enter into reinsurance agreements and establish rules, conditions, and procedures for reinsuring risks under the act.

Sec. 8. That section 44-4222, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4222. (1) A person shall not be eligible for initial or continued coverage under the pool if:

(a) He or she is eligible for medicare benefits or medical assistance established pursuant to

sections 68-1018 to 68-1025 or is a resident or inmate of a correctional facility;

(b) He or she has terminated coverage in the pool; unless twelve months have elapsed since such termination;

(c) The pool has paid out five hundred thousand dollars in claims for the person; or

(d) He or she is no longer a resident of Nebraska.

(2) Coverage under the Comprehensive Health Insurance Pool Act shall terminate for any person on the date the person becomes ineligible under subsection (1) of this section.

(3) Any person whose health insurance coverage is involuntarily terminated for any reasons other than nonpayment of premium and who is not eligible for a conversion policy may apply for coverage under the Comprehensive Health Insurance Pool Act; but shall submit proof of eligibility pursuant to section 44-4221- if such proof is supplied and if coverage is applied for under the act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period; the effective date of the coverage shall be the day following termination of the previous coverage. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under the prior health insurance coverage have been satisfied. The board may assess an additional premium for coverage provided under the act in this manner; notwithstanding the premium limitations stated in section 44-4227.

Sec. 9. That section 44-4227, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4227. Premium rates charged for pool coverage may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. Rates shall directly relate to the coverage provided, risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices.

The pool shall determine the standard risk rate by calculating the average individual rate charged by the five insurers writing the largest amount of individual health insurance coverage in the state

actuarially adjusted to be comparable with the pool coverage. In the event five insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage. The initial annual premium rate established for pool coverage shall not be more than one hundred thirty-five percent of rates established as applicable for individual standard risks. Subsequent annual rates shall be established to provide for the expected costs of claims, including recovery of prior losses, expenses of operation, investment income of claim reserves, and any other cost factors subject to the limitations described in this section. In no event shall pool rates exceed one hundred sixty-five percent of rates applicable to individual standard risks, except as provided by subsection (3) of section 44-4222. All rates and rate schedules shall be submitted to the director for approval.

Sec. 10. That section 44-4228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4228. Except as provided by subsection (3) of section 44-4222, pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of coverage as to any condition (1) which had manifested itself during the six-month period immediately preceding the effective date of coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (2) for which medical advice, care, or treatment was recommended or received during the six-month period immediately preceding the effective date of coverage.

Sec. 11. Any health care program administered pursuant to sections 68-1018 to 68-1025 which (1) provides payment for pharmacy services, (2) proposes to offer a pharmacy benefit, or (3) proposes to change the manner of payment for pharmacy services when performed by one or more pharmacy providers who are selected by the program administrator shall provide written notice of any intention to contract or change the manner of payment for pharmacy services to all pharmacy providers in the area serviced by the program. The notice shall inform all the pharmacy providers in the service area of the program administrator's intent to contract or intent to change the manner of payment for pharmacy services and shall give those providers, for a period of sixty days from the date of the notice, an opportunity to

accept the offer to participate in the program's panel of providers on the terms proposed.

In the event a pharmacy provider does not elect to become a participating provider but gives written notice during the sixty-day period to the program administrator of its desire to provide program recipients in the service area with access to pharmacy services as a nonparticipating provider, the program administrator may pay the nonparticipating provider an amount equal to the payment made to participating providers for comparable pharmacy services.

Sec. 12. Sections 1, 2, 4, and 13 of this act shall become operative three calendar months after adjournment of the Ninety-first Legislature, First Session. The other sections of this act shall become operative on their effective date.

Sec. 13. That original sections 44-2002 and 44-2006, Reissue Revised Statutes of Nebraska, 1943, and section 44-3904, Reissue Revised Statutes of Nebraska, 1943, as amended by section 244, Legislative Bill 92, Ninety-first Legislature, First Session, 1989, are repealed.

Sec. 14. That original sections 44-3503, 44-4216, 44-4217, 44-4220, 44-4222, 44-4227, and 44-4228, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.