

LEGISLATIVE BILL 162

Approved by the Governor June 1, 1995

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-2001, 44-2003, and 44-2216, Reissue Revised Statutes of Nebraska, and sections 44-221 and 44-322, Revised Statutes Supplement, 1994; to change provisions relating to payments on surplus notes, annual financial statements, unauthorized insurers, and agents; and to repeal the original sections.

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

Section 1. Section 44-221, Revised Statutes Supplement, 1994, is amended to read:

44-221. (1) Except as provided in this section subsection, surplus notes issued prior to the effective date of this act and the indebtedness which they represent shall not be a liability or claim against any of the assets of the company. The principal of such notes may be paid from time to time, either in full or in part, from available surplus funds of the company only when the amount of the surplus of the company over all liabilities is double that of the principal amount then being paid. The company shall have the right to make such repayments whenever it is able to do so, except that the company shall first receive the prior approval of the Director of Insurance for any such repayments. The director shall use the standards set forth in section 44-2136 relating to adequacy of surplus in determining whether or not to approve such repayments. The interest on such notes shall only be payable from the surplus and shall not exceed such sum as may be fixed. Upon a dissolution of the company, the principal and accrued and unpaid interest shall be payable from the surplus.

(2) Except as provided in this subsection, the principal of surplus notes issued on or after the effective date of this act and the indebtedness which such notes represent shall not be a liability or claim against any of the assets of the company. The principal of and interest on such notes may be paid from time to time, either in full or in part, from available surplus funds of the company only when the amount of the surplus of the company over all liabilities is double that of the amount of principal and interest then being paid. The company shall have the right to make such payments whenever it is able to do so, except that the company shall first receive the prior approval of the Director of Insurance for any such payments. The director shall use the standards set forth in section 44-2136 relating to adequacy of surplus in determining whether or not to approve such payments. Upon a dissolution of the company, the principal and accrued and unpaid interest shall be payable from the surplus.

Sec. 2. Section 44-322, Revised Statutes Supplement, 1994, is amended to read:

44-322. (1) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall file with the director on or before March 1 of each year an annual financial statement for the year ending December 31 immediately preceding on forms prescribed by the director which conform substantially to the forms adopted by the National Association of Insurance Commissioners. Unless the director provides otherwise, the financial statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and shall include the salaries and compensation of the officers and any other information required by the director. Every insurance company subject to this section shall make such other periodic financial filings as the director may reasonably require.

The director shall suspend or shall not issue or renew the certificate of authority of an insurance company until it has complied with the requirements of this subsection and any rules and regulations or orders issued thereunder, except that for good and sufficient cause shown the director may grant a reasonable extension of time within which the financial statement may be filed, in no event to exceed thirty days. The In addition to or in lieu of suspension or refusal to issue or renew the certificate of authority, the director may order an insurance company which fails to comply with the requirements of file its annual financial statement as required under this subsection and any rules and regulations or orders issued thereunder to pay an administrative penalty of five hundred dollars and an additional

penalty of not to exceed five hundred dollars for each day thereafter such failure continues and the company continues to transact any business of insurance.

(2) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall participate in the National Association of Insurance Commissioners Insurance Regulatory Information System, including the payment of all fees and charges of such system, except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners on or before March 1 of each year a copy of its annual financial statement along with any additional filings required by the director for the immediately preceding year. The financial statement so filed shall be in the same format and scope as that required by subsection (1) of this section and shall include a signed jurat page and actuarial certification except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners any amendments and addendums to the financial statement and annual and quarterly financial statement information in computer readable format as required by the Insurance Regulatory Information System.

Sec. 3. Section 44-2001, Reissue Revised Statutes of Nebraska, is amended to read:

44-2001. The purpose of sections 44-2001 to 44-2007 the Unauthorized Insurers Act is to subject certain insurers to the jurisdiction of the Department of Insurance and the courts of this state in administrative proceedings and in suits by or on behalf of the state. The Legislature declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the Legislature herein exercises its powers to protect residents of this state and to define what constitutes transacting an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, 59 Stat. 33; 15 U.S.C. 1011 to 1015 inclusive, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

Sec. 4. Section 44-2003, Reissue Revised Statutes of Nebraska, is amended to read:

44-2003. (1) Whenever the Director of Insurance believes, from evidence satisfactory to him or her, that any insurer is violating or about to violate the provisions of section 44-2002, the director may, through the Attorney General, cause a complaint to be filed in the district court to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

(2) Whenever the Director of Insurance believes that any insurer is violating or about to violate section 44-2002, the director may, without notice, and before a hearing, issue a summary cease and desist order. At the same time the order is issued, the director shall serve notice to the insurer of the reasons for such order and that the insurer may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director. Any insurer aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act. In the event of noncompliance with a summary cease and desist order, the director may, through the Attorney General, cause a complaint to be filed in the district court to enforce the order. For purposes of this subsection, insurer shall include a person or other entity.

Sec. 5. Section 44-2216, Reissue Revised Statutes of Nebraska, is amended to read:

44-2216. All individuals selling individual variable annuities must be licensed to write variable contracts in this state under the Insurance Producers Licensing Act. sell life insurance in this state and must submit to and successfully pass a written examination on a National Association of Insurance Commissioners-Securities and Exchange Commission authorized form or

otherwise qualify as the Director of Insurance may provide.

Sec. 6. Original sections 44-2001, 44-2003, and 44-2216, Reissue Revised Statutes of Nebraska, and sections 44-221 and 44-322, Revised Statutes Supplement, 1994, are repealed.