



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 119

Hearing Date: January 18, 2005

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking, Commerce and Insurance Committee)

Title: Change provisions relating to insurance

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Senators Mines, Redfield, Flood, Jensen, Langemeier, Louden, Pahls
	No	
	Present, not voting	
1	Absent	Senator Johnson

Proponents:

Senator Mick Mines
Tim Wagner
Jim Hall
Janis McKenzie
Joe Elliott
Ted Fraizer
Coleen Nielsen
Korby Gilbertson
Terry Headley

Representing:

Introducer
NE Department of Insurance
American Council of Life Insurers
NE Insurance Federation
Professional Insurance Agents Association
American Insurance Association
NE Insurance Information Service
Property Casualty Insurers Assn. of America
National Association of Insurance and Financial Advisors - NE

Opponents:

Chris Jerram

Representing:

Self
NE Association of Trial Attorneys

Neutral:

Representing:

Summary of purpose and/or changes:

LB 119 (Banking, Commerce and Insurance Committee), introduced at the request of the Department of Insurance, would amend various sections within the insurance statutes. The bill would provide as follows:

BURIAL PRE-NEED

Section 1 would amend section 12-1108 of the Burial Pre-Need Act to increase the application fee for a pre-need seller to obtain licensure under the Act from fifty dollars to one hundred dollars.

Section 2 would amend section 12-1110 of the Burial Pre-Need Act to increase the filing fee for a report from a pre-need seller to the Director of Insurance of the trust funds maintained under the Act from twenty-five dollars to fifty dollars.

Section 3 would amend section 12-1115 of the Burial Pre-Need Act to increase the fee for licensure for a pre-need seller agent license under the Act from ten dollars to twenty dollars.

Section 4 would amend section 12-1116 of the Burial Pre-Need Act to provide that in the event of a violation of the Act, in addition to revocation of licensure, the Director of Insurance would be allowed to suspend the license or impose a fine of not more than one thousand dollars per violation.

INSURANCE RESERVES

Section 5 would amend section 44-401 to provide conforming amendments to new sections 31 to 36 of the bill.

Section 6 would amend section 44-402.01 to explicitly set forth the authority of an insurer to guaranty the value of assets held in separate accounts.

Section 7 would amend section 44-409 to provide conforming amendments to new sections 31 to 36 of the bill.

Section 8 would amend section 44-417 to provide conforming amendments to new sections 31 to 36 of the bill.

SICKNESS AND ACCIDENT POLICY PROVISIONS

Section 9 would amend section 44-789 to specify that mandated benefits for tempromandibular disorder only apply to coverage for tempromandibular disorder.

Section 10 would amend section 44-797 to extend the current Nebraska breast reconstruction mandate to individual health plans in order to comply with federal law. The amendments to this section would also specify which types of plans are exempted from this mandate.

HOLDING COMPANIES

Section 11 would amend section 44-2131 of the Insurance Holding Company Act to change the due date for the registration fee related to Form B holding company statements from March 1 to May 1.

Section 12 would amend section 44-2132 to change the filing date for Form B holding company statements from March 1 to May 1.

SUPERVISION, REHABILITATION, AND LIQUIDATION

Section 13 would amend section 44-4814 of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to confirm the authority of the Director of Insurance as receiver under the Act to sell the licenses held by an insolvent insurer in order to maximize the value of the insurer's assets in the event of insolvency and would adopt clear procedures and standards for the court when considering requests from the rehabilitator to approve such transactions.

INSURERS INVESTMENTS

Section 14 would amend section 44-5103 of the Insurers Investment Act to adopt new definitions to allow insurers to use broker-dealers to hold securities owned by domestic insurers and would redefine pertinent terms for purposes of the Act.

Section 15 would amend section 44-5109 of the Insurers Investment Act to adopt standards to allow insurers to use broker-dealers to hold securities owned by domestic insurers, thereby authorizing domestic insurers to use modern systems for holding and transferring securities without taking physical delivery of securities certificates.

Section 16 would amend section 44-5143 of the Insurers Investment Act to increase the permitted loan to value ratio for insurers investing in mortgages from seventy-five percent to eighty percent. This section would allow insurers to carry second mortgages when the insurer also holds the first mortgage and the aggregate loan to value ratio does not exceed eighty percent. This section would permit investment in mezzanine real estate loans, which are made by insurers to borrowers on the security of a debt obligation that is not a security secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

Section 17 would amend section 44-5144 of the Insurers Investment Act to correct a typographical error: a reference to "expired" portions of long term leases as relates to permissible investments under the Act should read "unexpired".

Section 18 would amend section 44-5149 of the Insurers Investment Act to add replication transactions to the hedging and income-generation derivative transactions permitted under current law under certain circumstances. Replication transactions are derivative transactions that replicate the investment characteristics of another authorized investment.

Section 19 would amend section 44-5153 of the Insurers Investment Act to harmonize internal references to amendments to section 44-5149.

Section 20 would amend section 44-5154 of the Insurers Investment Act to grant the Director of Insurance rulemaking authority to implement standards to allow insurers to use broker-dealers to hold securities owned by domestic insurers.

UTILIZATION REVIEW

Section 21 would amend section 44-5418 of the Utilization Review Act to confirm that the Act does not apply to automobile medical payments coverage, uninsured motorist coverage, underinsured motorist coverage, and bodily injury coverage.

SURPLUS LINES

Section 22 would amend section 44-5505 of the Surplus Lines Insurance Act to remove the requirement that surplus lines licensees maintain an office in this state, as this is no longer allowed pursuant to the federal Gramm-Leach-Bliley Act.

Section 23 would amend section 44-5508 of the Surplus Lines Insurance Act to provide conforming amendments to new sections 31 to 36 of the bill.

MUTUAL HOLDING COMPANIES

Section 24 would amend section 44-6122 of the Mutual Insurance Holding Company Act to provide for codification of new section 26 of the bill within the Act.

Section 25 would amend section 44-6125 of the Mutual Insurance Holding Company Act to provide conforming amendments to implement new section 26 of the bill.

Section 26 would enact a new section in the Mutual Insurance Holding Company Act to grant Nebraska domiciled mutual holding companies the same authority to engage in merger and acquisitions as insurers or as mutual holding companies that are domiciled in several other states by granting clearer authority to acquire stock companies and merge with other mutual holding companies. This section would require that two-thirds of the members and the Director Insurance approve the plan or agreement of merger.

PROPERTY AND CASUALTY RATES AND FORMS

Section 27 would amend section 44-7506 of the Property and Casualty Insurance Rate and Form Act to include workers' compensation, farm and ranch, and personal lines insurance coverages within those lines for which rates are regulated on a competitive basis, as commercial lines coverage is generally. The rate regulation process would change from a "prior approval" process, in which the rate must be filed and approved by the Department of Insurance before it is charged by the insurer to a "file and use" process, in which, before the rate is charged by the insurer, it must be filed with the department. In addition, rates would no longer be regulated by the department to avoid excessive or unfairly discriminatory rates, but these would be controlled by the marketplace. Existing standards prohibiting rates based on race, ethnicity, religion, or creed would be maintained. If, after a hearing, the Director of Insurance was to find that a competitive market for this coverage did not exist, these coverages could be returned to by the director the current prior approval regulatory process.

Section 28 would amend section 44-7508.01 of the Property and Casualty Insurance Rate and Form Act to include farm and ranch and personal lines insurance coverages within those lines for which forms are regulated on a competitive basis, as commercial lines coverage is generally. This section would change the process of policy form regulation, and the applicable standards, for farm and ranch and personal lines insurance from a "prior approval" process, in which the form must be filed and approved by the Department of Insurance before it is used by

the insurer to a “file and use” process, in which , before the form is used by the insurer, it must be filed with the department.

Section 29 would amend section 44-7509 of the Property and Casualty Insurance Rate and Form Act to specify that the forty percent rate adjustment applicable to insurance lines where the rate is regulated on a file and use basis would not be applicable to personal lines insurance and farm and ranch insurance. This section would grant the ability for an insurer to make a forty percent rate adjustment to workers’ compensation insurance rates.

Section 30 would amend section 44-7511 of the Property and Casualty Rate and Form Act to repeal the ability of insurers to agree with insureds to use a rate exceeding the rate on file with the Department of Insurance, as the insurer would have the authority to make the forty percent rate adjustment allowed under section 29 of the bill.

CREDIT FOR REINSURANCE

Section 31 would enact a new section to recodify the current credit for reinsurance statutes found in sections 44-416 to 44-416.04 in order to conform to the form of the National Association of Insurance Commissioners Model Act. This section would state that the intent of the new credit for reinsurance statutes is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public generally.

Section 32 would enact a new section to set the standards for when a domestic insurer will be granted credit for reinsurance in evaluating the solvency of the insurer. This section would allow credit when the assuming party is a licensed insurer, an accredited reinsurer, domiciled in a state or jurisdiction with similar standards, maintains a trust fund, or if the risk is located in a jurisdiction where the reinsurance is required by applicable law, if each of these meets the requirements set forth in this section.

Section 33 would enact a new section to set forth the circumstances under which an asset or reduction from liability may be granted for transactions not meeting the requirements of section 32 of the bill in an amount not exceeding the liabilities carried by the ceding insurer. The reduction would be in the amount of funds held by or on behalf of the ceding insurer.

Section 34 would enact a new section to define “qualified U.S. financial institution”.

Section 35 would enact a new section to grant the Director of Insurance rulemaking authority to carry out new sections 31 to 36 of the bill.

Section 36 would enact a new section to specify that section 31 to 36 of the bill apply to all cessions after the effective date of this bill under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of this bill.

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Section 37 would ratify the Interstate Product Regulation Compact. Nebraska would join the National Association of Insurance Commissioners Interstate Insurance Product Regulation Compact (“Commission”). Under the current regulatory environment, each state insurance

department has jurisdiction over the approval of policies issued to insureds residing in their state. An insurance company must file and wait for an approval from the insurance department of every state where they do business.

The Commission would be made up of insurance commissioners of all the adopting states. The Commission would adopt and apply Uniform Standards to life, annuity, disability, and long-term care policy forms and advertisement as well as long-term care and disability premium rates. Additional product lines will be added later. Nebraska could opt out of a particular Uniform Standard via statute or regulation if the Uniform Standard does not provide reasonable protection to the citizens of Nebraska. A company would have the option of submitting a filing to the Commission or filing it directly to the Department of Insurance with the Nebraska statutes being applied in the latter situation. Nebraska would continue to be responsible for ongoing market regulation according to Nebraska statute. The Commission will become effective after 26 states have joined the Commission, or states have joined comprising 40 percent of the premium volume for the product lines involved.

Section 38 would appoint the Director of Insurance as Nebraska's member of the compact.

APPLICABILITY OF STATE LAW

Section 39 would specify that Nebraska mandated health care benefits apply to certificates issued by out-of-state benefit trusts domiciled in states which specify that their insurance laws do not apply to out-of-state certificates.

PROPERTY AND CASUALTY ACTUARIAL OPINIONS

Section 40 would provide a named act for new sections 40 to 42 of the bill: the Property and Casualty Actuarial Opinion Act.

Section 41 would enact a new section to require Nebraska domiciled property and casualty insurers to submit to the Department of Insurance a Statement of Actuarial Opinion and summary of the opinion, and would require all others to provide such documents on request.

Section 42 would enact a new section to provide that the statement of actuarial opinion is a public document, but that the underlying documentation and workpapers are not. This section would grant the Director of Insurance authority to release these documents to the Actuarial Board for Counseling and Discipline for professional disciplinary proceedings. This section would grant the director the authority to release these documents to and receive such documents from other regulators, the National Association of Insurance Commissioners and local, state, and federal, or international regulatory or law enforcement agencies without making these documents public documents.

WORKERS' COMPENSATION

Section 43 would amend section 48-146.01 of Nebraska Workers' Compensation Act to grant the Director of Insurance authority to adopt and promulgate rules and regulations regarding the administration of and eligibility for participation in the workers' compensation assigned risk pool.

MISCELLANEOUS PROVISIONS

Section 44 would provide repealers.

Section 45 would provide outright repealers for credit for reinsurance sections replaced by this bill.

Explanation of amendments, if any:

The committee amendments would:

- (1) strike from the bill section 9 which would amend section 44-789 regarding mandated coverage for temporomandibular disorder; and
- (2) strike from the bill section 21 which would amend section 44-5418 to specify explicitly that certain coverages are not included in the definition of “health benefit plan” for purposes of the Utilization Review Act. (This was the only section of the bill to which there was opposition on the record at the bill’s public hearing.)

Senator Mick Mines, Chairperson