



**Hundredth Legislature - First Session - 2007**  
**Revised Committee Statement**  
**LB 117**

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**Hearing Date:** January 23, 2007

**Committee On:** Banking, Commerce and Insurance

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

**Title:** Change provisions relating to insurance

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

8	Yes	Senators Pahls, Langemeier, Carlson, Christensen, Gay, Hansen, Pankonin, Pirsch
	No	
	Present, not voting	
	Absent	

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**Proponents:**

Senator Rich Pahls  
Tim Wagner  
Jan McKenzie  
Coleen Nielsen  
Joe Elliott  
Jim Cavanaugh

**Representing:**

Introducer  
NE Department of Insurance  
NE Insurance Federation  
NE Insurance Information Service  
Professional Insurance Agents Association  
Independent Insurance Agents of NE

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 117 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, would amend various sections with regard to insurance. The bill would provide, section by section, as follows:

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## BUSINESS CORPORATIONS

Section 1 would amend section 21-2005 of the Business Corporation Act to provide that when articles of incorporation or documents relating to redomestication of an insurer to Nebraska are filed with the Secretary of State, the fee shall be \$300. This would be a new category of fee.

## DEPOSIT OF SECURITIES

Section 2 would amend section 44-319.07 to provide that if a domestic insurer or assessment association fails to comply with this section regarding the maintaining of deposit of securities for the benefit of policyholders then such insurer or assessment association shall forfeit \$500 for each failure.

## WORKERS' COMPENSATION ASSIGNED RISK

Section 3 would amend section 48-146.01 of the Nebraska Workers' Compensation Act to provide that if the assigned risk system ceases to be viable, the Director of Insurance would be authorized, after consultation with workers' compensation insurers, to create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such insurers and risk management pools. Such alternative could not use an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization. The provisions of this section would be restructured and the section would be reassigned to Chapter 44.

## STANDARD POLICY PROVISIONS AND FORMS

Sections 4 to 7 would amend sections 44-501, 44-507, 44-508, and 44-522 regarding insurance policy provisions and forms to accommodate recent amendments to the Property and Casualty Insurance Rate and Form Act (sections 44-7501 to 44-7535) which permit "file and use" rather than "prior approval" of some property and casualty insurance forms.

## VIATICAL SETTLEMENTS

Section 8 would amend section 44-1104 of the Viatical Settlements Act to provide that an applicant for a license or a licensee may demand a hearing after the Director Insurance denies an application or refuses to renew a license rather require the director to first conduct a hearing if he or she denies an application or refuses to renew a license. The applicant or licensee would have 30 days to demand a hearing and the hearing would be required to be held within thirty days of the demand.

## LONG-TERM CARE INSURANCE

Section 9 would amend section 44-4501 of the Long-Term Care Insurance Act to provide for new section 10 to be assigned within that act.

Section 10 would enact a new section to be assigned within the Long-Term Care Insurance Act to provide that:

- (1) an individual may not sell, solicit, or negotiate long-term care insurance unless (a) licensed as an insurance producer for health or sickness and accident insurance and (b) has completed a one-time training course on or before August 1, 2008 and ongoing training every 24 months thereafter;

- (2) the one-time training course shall be no less than eight hours and the ongoing training shall be no less than 24 hours in length, and all training shall consist of topics related to long-term care insurance, long-term care services, and qualified state long-term insurance partnership programs;
- (3) insurers shall obtain verification that its insurance producers receive the required training and shall maintain records available to the Director of Insurance;
- (4) training in other states shall satisfy requirements of this state; and
- (5) the training requirements may be approved as satisfying current continuing education requirements.

Section 11 would amend section 45-4519 of the Long-Term Care Insurance Act to provide that the Director of Insurance shall have rule and regulation authority regarding minimum standards for insurance producer training.

#### SURPLUS LINES INSURANCE

Section 12 would amend section 44-5501 of the Surplus Lines Insurance Act to provide for new section 15 to be assigned within the act.

Section 13 would amend section 44-5502 of the Surplus Lines Insurance Act to provide for a definition of “industrial insured”: an insured that (a) procures insurance other than sickness and accident insurance and life and annuity contracts, has 50 full-time employees, and has aggregate premiums for insurance on all risks other than workers’ compensation that total at least \$100,000; and (b) uses a salaried, full-time employee to advise on insurance matters.

Section 14 would amend section 44-5504 of the Surplus Lines Insurance Act to provide that an industrial insured shall not be required to obtain a surplus lines license from the Department of Insurance to procure insurance upon any risk in this state through any nonadmitted insurer.

Section 15 would enact a new section to be assigned within the Surplus Lines Insurance Act to provide that every industrial insured shall pay (1) a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers and (2) the fire insurance tax prescribed in section 81-523.

Sections 16 to 18 would amend section 44-7504 of the Property and Casualty Insurance Rate and Form Act, section 48-144.03 of the Nebraska Workers’ Compensation Act, and section 48-446 regarding workplace safety consultation programs to harmonize an internal reference.

Section 19 would provide for section 48-146.01 of the Nebraska Workers’ Compensation Act as amended by section 3 to be assigned to Chapter 44, article 3.

Section 20 would provide repealers.

#### **Explanation of amendments, if any:**

The committee amendments (AM137) would become the bill. The committee amendments contain the provisions of LB 117, LB 119, LB 120, and LB 121, as follows:

The provisions of LB 117 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, would amend various sections with regard to insurance. (Sections 1 to 11, 21-25, 33, 34, and 54 of the committee amendments.)

The provisions of LB 119 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, would amend sections 44-5103, 44-5110, 44-5111, 44-5120, 44-5137, 44-5140, 44-5141, 44-5152, and 44-5153 of the Insurers Investment Act to change provisions regarding authorized investments of Nebraska domestic insurers. (Sections 12 to 20 of the committee amendments.)

The provisions of LB 120 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, and committee amendments to LB 120, would amend sections 44-8101 to 44-8107 of the Nebraska Senior Protection in Annuity Transactions Act by repealing every reference to “senior” in those sections so that the act’s protections would apply to all consumers entering annuity transactions and not just those age 65 or older. (Sections 26 to 32 of the committee amendments.)

The provisions of LB 121 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, and committee amendments to LB 121, would provide for the organization and regulation of captive insurers. A captive insurer would be defined as a domestic insurer authorized to provide insurance and reinsurance to its parents, any affiliated entity, or both. The provisions would further provide for the creation of special purpose financial captive insurers. A special purpose financial captive insurer would be limited to providing insurance or reinsurance protection for a parent or affiliated Nebraska domestic life insurer. (Sections 35 to 53 of the committee amendments.)

The committee amendments would provide, section by section, as follows:

#### BUSINESS CORPORATIONS

Section 1 would amend section 21-2005 of the Business Corporation Act to provide that when articles of incorporation or documents relating to redomestication of an insurer to Nebraska are filed with the Secretary of State, the fee shall be \$300. This would be a new category of fee. (Section 1 of LB 117 as introduced.)

#### DEPOSIT OF SECURITIES

Section 2 would amend section 44-319.07 to provide that if a domestic insurer or assessment association fails to comply with this section regarding the maintaining of deposit of securities for the benefit of policyholders then such insurer or assessment association shall forfeit \$500 for each failure. (Section 2 of LB 117 as introduced.)

#### WORKERS’ COMPENSATION ASSIGNED RISK

Section 3 would amend section 48-146.01 of the Nebraska Workers’ Compensation Act to provide that if the assigned risk system ceases to be viable, the Director of Insurance would be authorized, after consultation with workers’ compensation insurers, to create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such insurers and risk management pools. Such alternative could not use

an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization. The provisions of this section would be restructured and the section would be reassigned to Chapter 44. (Section 3 of LB 117 as introduced.)

#### STANDARD POLICY PROVISIONS AND FORMS

Sections 4 to 7 would amend sections 44-501, 44-507, 44-508, and 44-522 regarding insurance policy provisions and forms to accommodate recent amendments to the Property and Casualty Insurance Rate and Form Act (sections 44-7501 to 44-7535) which permit “file and use” rather than “prior approval” of some property and casualty insurance forms. (Sections 4 to 7 of LB 117 as introduced.)

#### VIATICAL SETTLEMENTS

Section 8 would amend section 44-1104 of the Viatical Settlements Act to provide that an applicant for a license or a licensee may demand a hearing after the Director Insurance denies an application or refuses to renew a license rather require the director to first conduct a hearing if he or she denies an application or refuses to renew a license. The applicant or licensee would have 30 days to demand a hearing and the hearing would be required to be held within thirty days of the demand. (Section 8 of LB 117 as introduced.)

#### LONG-TERM CARE INSURANCE

Section 9 would amend section 44-4501 of the Long-Term Care Insurance Act to provide for new section 10 to be assigned within that act. (Section 9 of LB 117 as introduced.)

Section 10 would enact a new section to be assigned within the Long-Term Care Insurance Act to provide that:

- (1) an individual may not sell, solicit, or negotiate long-term care insurance unless (a) licensed as an insurance producer for health or sickness and accident insurance and (b) has completed a one-time training course on or before August 1, 2008 and ongoing training every 24 months thereafter;
- (2) the one-time training course shall be no less than eight hours and the ongoing training shall be no less than 24 hours in length, and all training shall consist of topics related to long-term care insurance, long-term care services, and qualified state long-term insurance partnership programs;
- (3) insurers shall obtain verification that its insurance producers receive the required training and shall maintain records available to the Director of Insurance;
- (4) training in other states shall satisfy requirements of this state; and
- (5) the training requirements may be approved as satisfying current continuing education requirements. (Section 10 of LB 117 as introduced.)

Section 11 would amend section 44-4519 of the Long-Term Care Insurance Act to provide that the Director of Insurance shall have rule and regulation authority regarding minimum standards for insurance producer training. (Section 11 of LB 117 as introduced.)

## INSURERS INVESTMENTS

Section 12 would amend section 44-5103 of the Insurers Investment Act to provide that the definition of “obligation” includes participations, certificates, or other evidences of an interest in a bond, debenture, note, or other evidence of indebtedness. (Section 1 of LB 119.)

Section 13 would amend section 44-5110 of the Insurers Investment Act to remove the specific limitation on participations so the act can rely instead on the general requirements on specific types of investments. (Section 2 of LB 119.)

Section 14 would amend section 44-5111 of the Insurers Investment Act to provide that with regard to investment limitations in the act based upon the amount of the insurer’s admitted assets or policyholders surplus, an investment shall be measured by “the lesser of” actual cost “or admitted value” at the time of acquisition, and that if there is no actual cost at the time of acquisition, the investment shall be measured at “the lesser of” fair value “or admitted value”. (Section 3 of LB 119.)

Section 15 would amend section 44-5120 of the Insurers Investment Act to provide that any investment made by an insurer with cash received as collateral for loaned securities shall, in addition to being made in the same kinds, classes, and investment grades as those authorized under the act, be made “in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes”. (Section 4 of LB 119.)

Section 16 would amend section 44-5137 of the Insurers Investment Act, regarding foreign securities, to provide that (1) an insurer’s authorized investments in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the National Association of Insurance Commissioners Securities Valuation Office “shall not exceed three percent of the insurer’s admitted assets” rather than shall include no such investments, and (2) an insurer’s authorized investments in foreign securities shall not exceed, in the aggregate, “twenty” rather than “fifteen” percent of its admitted assets. This section would further provide that an insurer’s authorized investments in foreign securities shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in hedging transactions to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect. (Section 5 of LB 119.)

Section 17 would amend section 44-5140 of the Insurers Investment Act to provide that a life insurer’s authorized investments in preferred stock shall not exceed the greater of “twenty-five” rather than “ten” percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall such investments that are not rated P-1 or P-2 by the National Association of Insurance Commissioners Securities Valuation Office exceed ten percent of its admitted assets. (Section 6 of LB 119.)

Section 18 would amend section 44-5141 of the Insurers Investment Act to provide that an insurer may invest in equity interests or rights to purchase or sell equity interests in business entities, other than general partnerships, created or existing under laws anywhere and not just

under the laws of the United States or Canada or any state or province thereof. (Section 7 of LB 119.)

Section 19 would amend section 44-5152 of Insurers Investment Act to provide for restructuring of its provisions imposing limitations on an insurer's investments in obligations having a 3, 4, 5, or 6 designation from the National Association of Insurance Commissioners Securities Valuation Office and would delete provisions which provide that an insurer's investments in obligations having any combination of 4, 5, and 6 designations, in the aggregate, or having 5 and 6 designations, in the aggregate, shall not exceed four percent or two percent, respectively, of the insurer's admitted assets. (Section 8 of LB 119.)

Section 20 would amend section 44-5153 of the Insurer's Investment Act to provide that an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums "as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322". (Section 9 of LB 119.)

#### SURPLUS LINES INSURANCE

Section 21 would amend section 44-5501 of the Surplus Lines Insurance Act to provide for new section 24 to be assigned within the act. (Section 12 of LB 117 as introduced.)

Section 22 would amend section 44-5502 of the Surplus Lines Insurance Act to provide for a definition of "industrial insured": an insured that (a) procures insurance other than sickness and accident insurance and life and annuity contracts, has 50 full-time employees, and has aggregate premiums for insurance on all risks other than workers' compensation that total at least \$100,000; and (b) uses a salaried, full-time employee to advise on insurance matters. (Section 13 of LB 117 as introduced.)

Section 23 would amend section 44-5504 of the Surplus Lines Insurance Act to provide that an industrial insured shall not be required to obtain a surplus lines license from the Department of Insurance to procure insurance upon any risk in this state through any nonadmitted insurer. (Section 14 of LB 117 as introduced.)

Section 24 would enact a new section to be assigned within the Surplus Lines Insurance Act to provide that every industrial insured shall pay (1) a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers and (2) the fire insurance tax prescribed in section 81-523. (Section 15 of LB 117 as introduced.)

#### PROPERTY AND CASUALTY INSURANCE RATES AND FORMS

Section 25 would amend section 44-7504 of the Property and Casualty Insurance Rate and Form Act to harmonize an internal reference. (Section 16 of LB 117 as introduced.)

#### PROTECTION IN ANNUITY TRANSACTIONS

Sections 26 to 32 would amend sections 44-8101 to 44-8107 of the Nebraska Senior Protection in Annuity Transactions Act by repealing every reference to "senior" in those sections so that the act's protections would apply to all consumers entering annuity transactions and not just those age 65 or older. The act states its purpose as setting forth standards and procedures for

recommendations made by insurance producers and insurers to consumers (currently only if age 65 or older) regarding annuity transactions so that their insurance needs and financial objectives at the time of the transaction are appropriately addressed. (Sections 1 to 7 of LB 120.)

#### WORKERS' COMPENSATION

Section 33 would amend section 48-144.03 of the Nebraska Workers' Compensation Act to harmonize an internal reference. (Section 17 of LB 117 as introduced.)

#### WORKPLACE SAFETY CONSULTATION

Section 34 would amend section 48-446 regarding workplace safety consultation programs to harmonize an internal reference. (Section 18 of LB 117 as introduced.)

#### CAPTIVE INSURERS

Section 35 would enact a new section to provide for a named act: the Captive Insurers Act. (Section 1 of LB 121.)

Section 36 would enact a new section to provide that the purposes of the act are to set forth the procedures for organizing and regulating the operations of captive insurers and to encourage integrity, financial solvency, and stability of captive insurers to promote the development of Nebraska businesses. (Section 2 of LB 121.)

Section 37 would enact a new section to provide definitions for "affiliated entity", "captive insurer" (a domestic insurer authorized to provide insurance and reinsurance to its parent, any affiliated entity, or both), "control", "director", and "parent". (Section 3 of LB 121.)

Section 38 would enact a new section to provide that no captive insurer shall adopt the name of any existing insurer or any name that may mislead the public. (Section 4 of LB 121.)

Section 39 would enact a new section to provide for application for and issuance of a certificate of authority to a captive insurer to transact business of insurance and to specify what lines of insurance a captive insurer may transact. (Section 5 of LB 121.)

Section 40 would enact a new section to provide for a board of directors or other governing body of a captive insurer. (Section 6 of LB 121.)

Section 41 would enact a new section to provide for annual renewal of the certificate of authority issued to a captive insurer. (Section 7 of LB 121.)

Section 42 would enact a new section to provide that every captive insurer shall file an annual report of its financial condition with the Director of Insurance and that the director may prescribe the format and frequency of other reports. (Section 8 of LB 121.)

Section 43 would enact a new section to provide requirements for a captive insurer to maintain capital and surplus. (Section 9 of LB 121.)

Section 44 would enact a new section to provide that the Director of Insurance may examine the financial condition, affairs, and management of any applicant or captive insurer



pursuant to the Insurers Examination Act (sections 44-5901 to 44-5910). (Section 10 of LB 121.)

Section 45 would enact a new section to provide that the Director of Insurance may prohibit or limit any investment that threatens solvency or liquidity of a captive insurer or if such investments are not made in accordance with the approved plan of operation, and provide that no captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director. (Section 11 of LB 121.)

Section 46 would enact a new section to provide requirements for a captive insurer in taking credit for reinsurance. (Section 12 of LB 121.)

Section 47 would enact a new section to provide that a captive insurer shall not be a member of either Nebraska guaranty association and that neither Nebraska guaranty association shall be applicable to coverage offered by a captive insurer. (Section 13 of LB 121.)

Section 48 would enact a new section to provide for approval by the Director of Insurance of voluntary dissolution of a captive insurer. (Section 14 of LB 121.)

Section 49 would enact a new section to provide that the Director of Insurance may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed \$1,000 per violation, or both, for violations of the act as set out in this section, and provide in lieu of or in addition to such administrative fines, the director may issue a cease and desist order to a captive insurer. (Section 15 of LB 121.)

Section 50 would enact a new section to allow for the creation of special purpose financial captive insurers. A special purpose financial captive insurer would be limited to providing insurance or reinsurance protection for a parent or affiliated Nebraska domestic life insurer. Subsection (2) would define for purposes of this section “counterparty”, “insolvency”, “insurance securitization”, “organizational document”, “permitted investments”, “securities”, “special purpose financial captive insurer”, “special purpose financial captive insurer contract”, and “special purpose financial captive insurer securities”. Subsection (3) would specify that in the event of a conflict between this section and other sections of the act, this section applies, and that specific requirements of this section do not apply if the Director of Insurance finds that a specific requirement is inappropriate because of the nature of the risk and if the special purpose financial captive insurer meets criteria established by rule and regulation of the director. Subsection (4) would allow special purpose financial captive insurers to be formed as stock corporations, limited liability companies, partnerships or other form of organization approved by the director. Subsection (5) would restrict special purpose financial captive insurers to entering only special purpose financial captive insurer contracts except as otherwise set forth. Subsection (6) would grant special purpose financial captive insurers authority to issue securities, enter contracts, and enter asset management agreements or other transactions. Subsection (7) would subject asset management agreements to the approval of the director. Subsection (8) would grant the special purpose financial captive insurer the authority to enter a special purpose financial captive insurer contract under the conditions set forth. Subsection (9) would adopt standards for granting credit for reinsurance to these transactions. Subsection (10) would grant the director the authority under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to seek

an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer on grounds as set forth. This subsection would set forth the procedure for this process. Subsection (11) would establish criteria for the payment of dividends. Subsection (12) would provide for the confidentiality of financial information received by the director under this section. (Committee amendments to LB 121.)

Section 51 would enact a new section to provide the Director of Insurance with rule and regulation authority to carry out the act. (Section 16 of LB 121.)

Section 52 would enact a new section to provide for specific provisions of the insurance statutes to apply to captive insurers. (Section 17 of LB 121.)

Section 53 would amend section 77-908 of the premium tax statutes to provide that a captive insurer authorized under the Captive Insurers Act shall each year pay a tax of one-fourth of one percent of the gross amount of direct writing premiums received by it for business transacted in Nebraska. (Section 18 of LB 121.)

#### MISCELLANEOUS PROVISIONS

Section 54 would provide for section 48-146.01 of the Nebraska Workers' Compensation Act as amended by section 3 to be assigned to Chapter 44, article 3. (Section 19 of LB 117 as introduced.)

Section 55 would provide for repealers of amendatory sections.

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**Senator Rich Pahls, Chairperson**