

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 378**

Introduced by Pahls, 31

Read first time January 16, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Small Employer Health Insurance  
2 Availability Act; to amend sections 44-5223, 44-5225,  
3 and 44-5260, Reissue Revised Statutes of Nebraska; to  
4 define bona fide association; to provide an exemption;  
5 to harmonize provisions; and to repeal the original  
6 sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 44-5223, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           44-5223 Sections 44-5223 to 44-5267 and section 3 of this  
4 act shall be known and may be cited as the Small Employer Health  
5 Insurance Availability Act.

6           Sec. 2. Section 44-5225, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           44-5225 For purposes of the Small Employer Health  
9 Insurance Availability Act, the definitions found in sections  
10 44-5226 to 44-5255.01 and section 3 of this act shall be used.

11           Sec. 3. Bona fide association means, with respect to  
12 health insurance coverage offered in this state, an association  
13 that meets the following conditions:

14           (1) Has been actively in existence for at least five  
15 years;

16           (2) Has been formed and maintained in good faith for  
17 purposes other than obtaining insurance;

18           (3) Does not condition membership in the association  
19 on any health status-related factor relating to an individual,  
20 including an employee of an employer or a dependent of any  
21 employee;

22           (4) Makes health insurance coverage offered through the  
23 association available to all members regardless of any health  
24 status-related factor relating to the members or individuals  
25 eligible for coverage through a member; and

1           (5) Does not make health insurance coverage offered  
 2 through the association available other than in connection with a  
 3 member of the association.

4           Sec. 4. Section 44-5260, Reissue Revised Statutes of  
 5 Nebraska, is amended to read:

6           44-5260 (1) For purposes of this section, small employer  
 7 shall mean, in connection with a group health plan with respect to  
 8 a calendar year and a plan year, any person, firm, corporation,  
 9 partnership, association, or political subdivision that is actively  
 10 engaged in business that employed an average of at least two but  
 11 not more than fifty employees on business days during the preceding  
 12 calendar year and who employs at least two employees on the first  
 13 day of the plan year. All persons treated as a single employer  
 14 under subsection (b), (c), (m), or (o) of section 414 of the  
 15 Internal Revenue Code shall be treated as one employer. Subsequent  
 16 to the issuance of a health benefit plan to a small employer  
 17 and for the purpose of determining continued eligibility, the  
 18 size of a small employer shall be determined annually. Except as  
 19 otherwise specifically provided, provisions of the Small Employer  
 20 Health Insurance Availability Act that apply to a small employer  
 21 shall continue to apply at least until the health benefit plan  
 22 anniversary following the date the small employer no longer meets  
 23 the requirements of this definition. In the case of an employer  
 24 which was not in existence throughout the preceding calendar year,  
 25 the determination of whether the employer is a small or large

1 employer shall be based on the average number of employees that it  
2 is reasonably expected the employer will employ on business days in  
3 the current calendar year. Any reference in the act to an employer  
4 shall include a reference to any predecessor of such employer.

5 (2) (a) Every small employer carrier shall, as a condition  
6 of transacting business in this state with small employers,  
7 actively offer to small employers all health benefit plans it  
8 actively markets to small employers in this state, including at  
9 least two health benefit plans. One health benefit plan offered  
10 by each small employer carrier shall be a basic health benefit  
11 plan, and one plan shall be a standard health benefit plan. A  
12 small employer carrier shall be considered to be actively marketing  
13 a health benefit plan if it offers that plan to any small  
14 employer not currently receiving a health benefit plan by such  
15 small employer carrier. This subdivision shall not apply to health  
16 insurance coverage offered by a health insurance issuer if the  
17 coverage is made available in the small group market only through  
18 one or more bona fide associations.

19 (b) (i) Subject to subdivision (2) (a) of this section,  
20 a small employer carrier shall issue any health benefit plan to  
21 any eligible small employer that applies for the plan and agrees  
22 to make the required premium payments and to satisfy the other  
23 reasonable provisions of the health benefit plan not inconsistent  
24 with the Small Employer Health Insurance Availability Act. However,  
25 no small employer carrier shall be required to issue a health

1 benefit plan to a self-employed individual who is covered by, or is  
2 eligible for coverage under, a health benefit plan offered by an  
3 employer.

4 (ii) In the case of a small employer carrier that  
5 establishes more than one class of business, the small employer  
6 carrier shall maintain and issue to eligible small employers at  
7 least one basic health benefit plan and at least one standard  
8 health benefit plan in each class of business so established. A  
9 small employer carrier may apply reasonable criteria in determining  
10 whether to accept a small employer into a class of business if:

11 (A) The criteria are not intended to discourage or  
12 prevent acceptance of small employers applying for a basic health  
13 benefit plan or a standard health benefit plan;

14 (B) The criteria are not related to the health status or  
15 claim experience of employees or dependents of the small employer;

16 (C) The criteria are applied consistently to all small  
17 employers applying for coverage in the class of business; and

18 (D) The small employer carrier provides for the  
19 acceptance of all eligible small employers into one or more classes  
20 of business.

21 The provisions of subdivision (2)(b)(ii) of this section  
22 shall not apply to a class of business into which the small  
23 employer carrier is no longer enrolling new small businesses.

24 (3)(a) A small employer carrier shall file with the  
25 director, in a format and manner prescribed by the director, the

1 basic health benefit plans and the standard health benefit plans  
2 to be used by the carrier. A health benefit plan filed pursuant to  
3 this subsection may be used by a small employer carrier beginning  
4 thirty days after it is filed unless the director disapproves its  
5 use.

6 (b) The director at any time may, after providing notice  
7 and an opportunity for a hearing to the small employer carrier,  
8 disapprove the continued use by a small employer carrier of a basic  
9 health benefit plan or standard health benefit plan on the grounds  
10 that the plan does not meet the requirements of the act.

11 (4) Health benefit plans covering small employers shall  
12 comply with the following provisions:

13 (a) A health benefit plan shall not deny, exclude,  
14 or limit benefits for a covered individual for losses incurred  
15 more than twelve months, or eighteen months in the case of a  
16 late enrollee, following the enrollment date of the individual's  
17 coverage due to a preexisting condition or the first date of  
18 the waiting period for enrollment if that date is earlier than  
19 the enrollment date. A health benefit plan shall not define  
20 a preexisting condition more restrictively than as defined in  
21 section 44-5246.02. A health benefit plan shall not impose  
22 any preexisting condition exclusion relating to pregnancy as a  
23 preexisting condition;

24 (b) A health benefit plan shall not impose any  
25 preexisting condition exclusion:

1           (i) To an individual who, as of the last day of the  
2 thirty-day period beginning with the date of birth, is covered  
3 under creditable coverage, and the individual had creditable  
4 coverage that was continuous to a date not more than sixty-three  
5 days prior to the enrollment date of new coverage; or

6           (ii) To a child less than eighteen years of age who is  
7 adopted or placed for adoption and who, as of the last day of  
8 the thirty-day period beginning on the date of the adoption or  
9 placement for adoption, is covered under creditable coverage, and  
10 the child had creditable coverage that was continuous to a date  
11 not more than sixty-three days prior to the enrollment date of new  
12 coverage;

13           (c) (i) A small employer carrier shall waive any  
14 time period applicable to a preexisting condition exclusion or  
15 limitation period with respect to particular services in a health  
16 benefit plan for the aggregate period of time an individual was  
17 previously covered by creditable coverage that provided benefits  
18 with respect to such services if the creditable coverage was  
19 continuous to a date not more than sixty-three days prior to the  
20 enrollment date of new coverage. The period of continuous coverage  
21 shall not include any waiting period or affiliation period for the  
22 effective date of the new coverage applied by the employer or the  
23 carrier. This subdivision shall not preclude application of any  
24 waiting period applicable to all new enrollees under the health  
25 benefit plan.

1           (ii) A small employer carrier that does not use  
2 preexisting condition limitations in any of its health benefit  
3 plans may impose an affiliation period:

4           (A) That does not exceed sixty days for new entrants and  
5 does not exceed ninety days for late enrollees;

6           (B) During which the carrier charges no premiums and the  
7 coverage issued is not effective; and

8           (C) That is applied uniformly, without regard to any  
9 health-status-related factor.

10          (iii) This subdivision does not preclude application of  
11 any waiting period applicable to all enrollees under the health  
12 benefit plan if any carrier waiting period is no longer than sixty  
13 days.

14          (iv) (A) In lieu of the requirements of subdivision  
15 (4) (c) (i) of this section, a small employer carrier may elect to  
16 reduce the period of any preexisting condition exclusion based on  
17 coverage of benefits within each of several classes or categories  
18 of benefits specified in federal regulations.

19          (B) A small employer electing to reduce the period of  
20 any preexisting condition exclusion using the alternative method  
21 described in subdivision (4) (c) (iv) (A) of this section shall make  
22 the election on a uniform basis for all enrollees and count a  
23 period of creditable coverage with respect to any class or category  
24 of benefits if any level of benefits is covered within the class or  
25 category.

1           (C) A small employer carrier electing to reduce the  
2 period of any preexisting condition exclusion using the alternative  
3 method described in subdivision (4) (c) (iv) (A) of this section shall  
4 prominently state that the election has been made in any disclosure  
5 statements concerning coverage under the health benefit plan to  
6 each enrollee at the time of enrollment under the plan and to each  
7 small employer at the time of the offer or sale of the coverage and  
8 include in the disclosure statements the effect of the election;

9           (d) (i) A small employer carrier shall permit an eligible  
10 employee or dependent, who requests enrollment following the open  
11 enrollment opportunity, to enroll, and the eligible employee or  
12 dependent shall not be considered a late enrollee if the eligible  
13 employee or dependent:

14           (A) Was covered under another health benefit plan at the  
15 time the eligible employee or dependent was eligible to enroll;

16           (B) Stated in writing at the time of the open enrollment  
17 period that coverage under another health benefit plan was the  
18 reason for declining enrollment but only if the health benefit plan  
19 or health carrier required such a written statement and provided a  
20 notice of the consequences of such written statement;

21           (C) Has lost coverage under another health benefit plan  
22 as a result of the termination of employment, the termination of  
23 the other health benefit plan's coverage, death of a spouse, legal  
24 separation, or divorce or was under a continuation-of-coverage  
25 policy or contract available under federal law and the coverage was

1 exhausted; and

2 (D) Requests enrollment within thirty days after the  
3 termination of coverage under the other health benefit plan.

4 (ii) (A) If a small employer carrier issues a health  
5 benefit plan and makes coverage available to a dependent of an  
6 eligible employee and such dependent becomes a dependent of the  
7 eligible employee through marriage, birth, adoption, or placement  
8 for adoption, then such health benefit plan shall provide for a  
9 dependent special enrollment period during which the dependent may  
10 be enrolled under the health benefit plan and, in the case of the  
11 birth or adoption of a child, the spouse of an eligible employee  
12 may be enrolled if otherwise eligible for coverage.

13 (B) A dependent special enrollment period shall be a  
14 period of not less than thirty days and shall begin on the later of  
15 (I) the date such dependent coverage is available or (II) the date  
16 of the marriage, birth, adoption, or placement for adoption.

17 (C) If an eligible employee seeks to enroll a dependent  
18 during the first thirty days of such a dependent special enrollment  
19 period, the coverage of the dependent shall become effective:

20 (I) In the case of marriage, not later than the first day  
21 of the first month beginning after the date the completed request  
22 for enrollment is received;

23 (II) In the case of the birth of a dependent, as of the  
24 date of birth; and

25 (III) In the case of a dependent's adoption or placement

1 for adoption, the date of such adoption or placement for adoption;

2 (e) (i) Except as provided in subdivision (4) (e) (iv) of  
3 this section, requirements used by a small employer carrier in  
4 determining whether to provide coverage to a small employer,  
5 including requirements for minimum participation of eligible  
6 employees and minimum employer contributions, shall be applied  
7 uniformly among all small employers with the same number of  
8 eligible employees applying for coverage or receiving coverage from  
9 the small employer carrier.

10 (ii) A small employer carrier may vary application  
11 of minimum participation requirements and minimum employer  
12 contribution requirements only by the size of the small employer  
13 group.

14 (iii) (A) Except as provided in subdivision (4) (e) (iii) (B)  
15 of this section, in applying minimum participation requirements  
16 with respect to a small employer, a small employer carrier shall  
17 not consider employees or dependents who have creditable coverage  
18 in determining whether the applicable percentage of participation  
19 is met.

20 (B) With respect to a small employer with ten or fewer  
21 eligible employees, a small employer carrier may consider employees  
22 or dependents who have coverage under another health benefit plan  
23 sponsored by such small employer in applying minimum participation  
24 requirements.

25 (iv) A small employer carrier shall not increase any

1 requirement for minimum employee participation or any requirement  
2 for minimum employer contribution applicable to a small employer at  
3 any time after the small employer has been accepted for coverage;  
4 and

5 (f)(i) If a small employer carrier offers coverage to  
6 a small employer, the small employer carrier shall offer coverage  
7 to all of the eligible employees of a small employer and their  
8 dependents who apply for enrollment during the period in which the  
9 employee first becomes eligible to enroll under the terms of the  
10 plan. A small employer carrier shall not offer coverage to only  
11 certain individuals in a small employer group or to only part of  
12 the group except in the case of late enrollees as provided in  
13 subdivision (4)(a) of this section.

14 (ii) Except as permitted under subdivisions (a) and (d)  
15 of this subsection, a small employer carrier shall not modify  
16 a health benefit plan with respect to a small employer or any  
17 eligible employee or dependent, through riders, endorsements, or  
18 otherwise, to restrict or exclude coverage or benefits for specific  
19 diseases, medical conditions, or services otherwise covered by the  
20 plan.

21 (iii) A small employer carrier shall not place any  
22 restriction in regard to any health-status-related factor on an  
23 eligible employee or dependent with respect to enrollment or plan  
24 participation.

25 (5) A small employer carrier shall not be required to

1 offer coverage or accept applications pursuant to subsection (2) of  
2 this section in the case of the following:

3 (a) To an employee if previous basic health benefit plans  
4 or standard health benefit plans have, in the aggregate, paid one  
5 million dollars in benefits on behalf of the employee. Benefits  
6 paid on behalf of the employee in the immediately preceding two  
7 calendar years by prior small employer carriers under basic and  
8 standard plans shall be included when calculating the lifetime  
9 maximum benefits payable under the succeeding basic or standard  
10 plans. In any situation in which a determination of the total  
11 amount of benefits paid by prior small employer carriers is  
12 required by the succeeding carrier, prior carriers shall furnish a  
13 statement of the total benefits paid under basic and standard plans  
14 at the succeeding carrier's request; or

15 (b) Within an area where the small employer carrier  
16 reasonably anticipates, and demonstrates to the satisfaction of the  
17 director, that it will not have the capacity within its established  
18 geographic service area to deliver service adequately to the  
19 members of such groups because of its obligations to existing group  
20 policyholders and enrollees.

21 (6) (a) A small employer carrier offering coverage through  
22 a network plan shall not be required to offer coverage or accept  
23 applications pursuant to subsection (2) of this section to or from  
24 a small employer as defined in subsection (1) of this section:

25 (i) If the small employer does not have eligible

1 employees who live, work, or reside in the service area for  
2 such network plan; or

3 (ii) If the small employer does have eligible employees  
4 who live, work, or reside in the service area for such network  
5 plan, the carrier has demonstrated, if required, to the director  
6 that it will not have the capacity to deliver services adequately  
7 to enrollees of any additional groups because of its obligations  
8 to existing group contract holders and enrollees and that it  
9 is applying subdivision (6)(a)(ii) of this section uniformly  
10 to all employers without regard to the claims experience of  
11 those employers and their employees and their dependents or  
12 any health-status-related factor relating to such employees and  
13 dependents.

14 (b) A small employer carrier, upon denying health  
15 insurance coverage in any service area in accordance with  
16 subdivision (6)(a)(ii) of this section, shall not offer coverage in  
17 the small employer market within such service area for a period of  
18 one hundred eighty days after the date such coverage is denied.

19 (7) A small employer carrier shall not be required to  
20 provide coverage to small employers pursuant to subsection (2)  
21 of this section for any period of time for which the director  
22 determines that requiring the acceptance of small employers in  
23 accordance with the provisions of such subsection would place the  
24 small employer carrier in a financially impaired condition.

25 Sec. 5. Original sections 44-5223, 44-5225, and 44-5260,

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1 Reissue Revised Statutes of Nebraska, are repealed.