

# **One Hundred Second Legislature - Second Session - 2012**

## **Introducer's Statement of Intent**

### **LB887**

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**Chairperson: Senator Rich Pahls**

**Committee: Banking, Commerce and Insurance**

**Date of Hearing: January 24, 2012**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB887 was introduced at the request of the Nebraska Department of Insurance and would do the following:

The bill would reduce from one hundred dollars to twenty dollars the fee for filings made by domestic assessment associations doing business in more than thirty-one counties and would eliminate the five dollar fee for reports filed by unincorporated mutual associations. (Section 44-114) (Section 1 of the bill).

The bill would include the International Association of Insurance Supervisors and the Bank for International Settlements in the list of institutions with which the director may enter agreements to share and receive information. (Section 44-154) (Section 2 of the bill).

The bill would amend the Insurance Holding Company System Act with National Association of Insurance Commissioners (NAIC) revisions in its model act. The act regulates the financial interactions between insurers and their parent and affiliate companies to prevent reserves and other insurer resources from being inappropriately diverted from the insurer which could result in the insurer's obligations being transferred to the largely state-funded guaranty funds.

The bill would provide that new sections 12 and 15 of the bill would be included in the Insurance Holding Company System Act; define "enterprise risk" as the risk posed to the insurer by non-insurer affiliates that are part of the same holding company system; require filings and approvals of divestitures of insurers by holding company systems so that a holding company cannot transfer controlling interest in an insurer by gifting or any other method without notice and review by the director; and require an agreement by acquiring parties that they will continue to provide annual statements under the act. The bill would require an acknowledgment from the acquiring party that the person and all subsidiaries in the insurance holding company will provide information at the request of the director and would allow hearings on insurer acquisitions to be held on a consolidated basis with participation by several insurance regulators at once.

The bill would grant rule and regulation authority to the director to define when cost sharing agreements between insurers and their affiliates are fair and reasonable, and would require filing of amendments or modifications of material affiliate agreements, including the reasons for and financial impact of the change. Such filings would include reinsurance agreements and tax allocation agreements. The bill would specify that the board membership requirements do not apply if the standard is met by the board of the person controlling the insurer, and would grant the director authority to examine registered insurers and their affiliates to ascertain the financial condition of the insurer, including enterprise risk to the insurer. The bill would grant the director explicit authority to participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations and would clarify that the provisions of section 44-154 authorizing the director to share information with other regulators applies to information under the act, and would grant specific authority to share information obtained under the act with the National Association of Commissioners.

The bill would allow, rather than require, the director to adopt and promulgate rules and regulations under the act and would specify that a violation of the act that prevents the full understanding of the enterprise risk to the insurer may serve as an independent basis for disapproval of dividends or placement of the insurer under a supervision order under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The bill would harmonize internal references to amendments to section 44-2126. (Sections 44-2120, 44-2121, 44-2126, 44-2127, 44-2129, 44-2132, 44-2133, 44-2135, 44-2137, 44-2138, 44-2139, and 44-32,1771) (Section 3 to 15 and 20 of the bill).

The bill would amend the Nebraska Life and Health Insurance Guaranty Association Act with NAIC revisions in its model act. The laws governing guaranty associations in the states have in the past varied considerably, both in the terms of coverage and the amount covered. An effort is being made across the country to standardize the provisions in an effort to simplify administration and thereby reduce the cost of administration of insolvent insurer estates. This will in turn reduce costs and insurer assessments; ultimately it will reduce the amount of Nebraska premium tax dollar offsets resulting from the cost of administration.

The bill would define “authorized” and “called” in the context of assessments and would exclude those insurers whose certificate of authority has not been renewed or has been voluntarily withdrawn, and also viatical assessment providers, brokers, and financing entities from the definition of “member insurer.” (Harvey v. Nebraska Life & Health Ins. Guar. Assn., 277 Neb. 757, 765 N.W.2d 206 (2009) held that a viatical settlement broker was not a “member insurer” and, therefore, the Nebraska Life and Health Insurance Guaranty Association was not obligated to guarantee its agreements.) The bill would define “owner of a policy” as a person identified as the legal owner, but not to include persons with a beneficial interest in the policy; “receivership court” as the court in the insolvent insurer's state with jurisdiction; “structured settlement annuity;” and specify that a “supplemental contract” is entered between a member insurer and an owner or beneficiary.

The bill would exclude coverage of Medicare Part C and D coverages and viatical settlement contracts, and would subdivide the coverage levels for health insurance benefits with a coverage limit of \$500,000 for basic hospital, medical, or surgical insurance or major medical insurance, \$300,000 for long-term care or disability insurance, and \$100,000 for coverages not specifically defined above. The bill would increase coverage for annuity benefits and structured settlement annuities from \$100,000 to \$250,000. The bill would specify that the

act must be construed to effect the purposes listed in section 44-2701 and would specify that the provisions of the act in effect on the date the association is obligated for the policies of insurance govern the association's rights or obligations to the policyowners. (Sections 44-2702, 44-2703, 44-2704, and 44-2719.02) (Sections 16 to 19 of the bill).

The bill would amend the Nebraska Protection in Annuity Transactions Act with NAIC revisions in its model act. Adoption of these amendments would allow insurers a uniform compliance standard and would allow Nebraska domestic insurers more flexibility to issue these products under federal law. If these amendments are adopted before June 16, 2013, the federal SEC must treat as exempt non variable annuities that are issued by an insurer domiciled in a state that has adopted these amendments. Adoption, therefore, benefits the insurers domiciled in Nebraska.

The bill would provide that new sections 28 and 29 of the bill would be included in the Nebraska Protection in Annuity Transaction Act; include in the purpose of the act the requirement that insurers establish a system to supervise recommendations; include annuity replacements within the scope of the act; specify that the act applies to transactions rather than recommendations; and define “continuing education provider,” “replacement,” and “suitability information” and also revise the definition of “annuity.”

The bill would require an insurance producer, or an insurer where no producer is involved, to have reasonable grounds for believing that a recommendation is suitable for a consumer based on the facts disclosed by the consumer, including the consumer's suitability information, and would require the producer or insurer to have a reasonable basis to believe that the consumer has been informed and provided information related to the annuity product the consumer is considering purchasing. The bill would specify that an insurance producer or insurer has no obligation to a consumer when no recommendation is made or a recommendation was made and it was later found that the recommendation was prepared based on materially inaccurate information. The bill would require insurers to establish a supervision system and would allow an insurer to contract the performance of a function required to be performed to a third party if the supervision system includes supervision of contractual performance. The bill would provide for a safe harbor for sales made in compliance with Financial Industry Regulatory Authority requirements pertaining to suitability and supervision of annuity transactions.

The bill would specify that an insurer is responsible for compliance with the act and that if a violation occurs by the insurer or its agent, the director may order penalties against the insurer. The bill would require a producer to have adequate product specific training, and would require completion of a one-time, minimum four-credit hour general annuity training course. The bill would specify that the changes made in the act by this bill shall apply to solicitations occurring on and after January 1, 2013. (Sections 44-8101, 44-8102, 44-8103, 44-8104, 44-8105, 44-8106, and 44-8107) (Sections 21 to 29 of the bill).

The bill would amend the Captive Insurers Act with regard to special purpose financial captive insurers. The bill would define “guaranty of a parent” as an agreement to pay specified obligations of the special purpose financial captive insurer by a parent of the captive insurer. The bill would allow the director to consider additional factors in determining whether to issue a certificate of authority to a special purpose financial captive insurer including the type of life insurance risks, the financial ability of a parent, and actuarial opinions. The bill would require an annual statement by a senior actuarial officer that the transactions are not used to gain an unfair advantage in the pricing of products. The bill

would allow a special purpose financial captive insurer to use a guaranty of a parent in lieu of a letter of credit. (Section 44-8216) (Section 30 of the bill).

**Principal Introducer:** \_\_\_\_\_

**Senator Rich Pahls**