

LEGISLATIVE BILL 722

Approved by the Governor May 26, 1971

Introduced by Herbert J. Duis, 39th District

AN ACT relating to insurance; to adopt the Nebraska Insurance Guaranty Association Act; to provide a method for the payment of certain claims against insolvent insurers as prescribed; to repeal sections 22 to 32, Legislative Bill 572, Eighty-second Legislature, First Session, 1971; and to declare an emergency.

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

Section 1. The purpose of this act is to provide a method for the payment of certain claims against insolvent insurance companies, as defined in this act, to avoid unnecessary delay in payment of such claims, to avoid financial loss to claimants or to policyholders, to assist in the detection and prevention of insurer insolvencies, and to provide an association of insurers against which the cost of such protection may be assessed in an equitable manner.

Sec. 2. This act shall apply to all kinds of direct insurance except mortgage guaranty, ocean marine, and those lines of insurance described in subdivisions (2), (3), (4), (10), (11) and (13) of section 44-201, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 3. As used in this act, unless the context otherwise requires:

(1) Account shall mean any one of the three accounts created by the provisions of section 4 of this act;

(2) Director shall mean the Director of Insurance or his duly authorized representative;

(3) Association shall mean the Nebraska Insurance Guaranty Association created by the provisions of section 4 of this act;

(4) Covered claim shall mean an unpaid claim, excluding one for unearned premiums, which has been timely filed with the liquidator as provided for in section 44-127.01, Reissue Revised Statutes of Nebraska,

1943, and which arises out of and is within the coverage of an insurance policy to which this act applies issued by a member insurer that becomes insolvent after the effective date of this act, and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. Covered claim shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and determined to be insolvent and ordered liquidated by a court of competent jurisdiction;

(6) Member insurer shall mean any person writing any kind of insurance to which this act applies by the provisions of section 2 of this act, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under the provisions of Chapter 44, article 8, Reissue Revised Statutes of Nebraska, 1943, and also excepting unincorporated mutuals and an insurer which was in fact insolvent on the effective date of this act;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, association, voluntary organization, or reciprocal insurance exchange; and

(9) Insurance shall mean those contracts defined in section 44-102, Reissue Revised Statutes of Nebraska, 1943.

Sec. 4. There is hereby created a nonprofit unincorporated legal entity to be known as the Nebraska Insurance Guaranty Association. All insurers defined as member insurers in subdivision (6) of section 3 of this act shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions

under a plan of operation established and approved by the provisions of section 8 of this act, and shall exercise its powers through a board of directors established by the provisions of section 5 of this act. For purposes of administration and assessment, the association shall be divided into three separate accounts: (a) The workmen's compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which this act applies.

Sec. 5. (1) The board of directors of the association shall consist of seven persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. At least four members of the board shall represent domestic insurers. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after the effective date of this act, the director may appoint the initial members of the board of directors.

(2) Subject to the limitations in subsection (1) of this section, the director shall, in approving selections to the board, consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Sec. 6. (1) The association shall be obligated only to the extent of the covered claims existing prior to the determination of insolvency or arising within thirty days after it has been determined that the insurer is an insolvent insurer, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than one hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(2) The director shall transmit to the association all covered claims timely filed with him pursuant to the provisions of sections 44-127.01 to 44-127.05, Reissue Revised Statutes of Nebraska, 1943. The association shall thereupon be considered to have been designated the director's representative pursuant to section 44-127.07, Reissue Revised Statutes of Nebraska, 1943, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by this act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations, and be subject to the same limitations and procedures, as are specified in sections 44-127.05 to 44-127.11, Reissue Revised Statutes of Nebraska, 1943, for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident or disability insurance, or under any salary or wage continuation program under which he is entitled to benefits, and any claimant who intentionally fails to correctly disclose his rights to any such benefits shall forfeit all rights to which he may have by the provisions of this act.

(4) A third party having a covered claim against any insured of an insolvent member insurer may file such claim with the director pursuant to the provisions of sections 44-127.01 to 44-127.05, Reissue Revised

Statutes of Nebraska, 1943, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section; Provided, that the filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim, unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent member company does not afford coverage, or unless the claimant shall, within thirty days from the date of filing his claim with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by this act.

Sec. 7. (1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account the amounts necessary to pay the obligations of the association under the provisions of section 6 of this act; the expenses of handling covered claims; the cost of examinations under the provisions of sections 12 and 13 of this act; and other expenses authorized by this act. The assessments of each member insurer shall be in proportion that the net direct written premiums of such member insurer for the preceding calendar year, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than one per cent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member companies that received larger assessments by virtue of such deferment, or in the discretion of any such company, credited against future assessments. No member insurer may pay a dividend to stockholders or policyholders while such insurer has an

unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility; Provided, that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and such other expenses of the association as are authorized by this act; and

(d) The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer, together with acquisition costs and taxes applicable to such rates and premiums.

(2) The association may:

(a) Appear in, defend, and appeal any action;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(c) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this act; and

(g) Refund to the member insurers in proportion to the contribution of each member insurer to any account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar

year, the board of directors finds that the assets of the association in the account exceed the liabilities of that account as estimated by the board of directors for the coming year.

Sec. 8. (1) (a) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the affairs of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the director.

(b) If the association fails to submit a suitable plan of operation within ninety days following the effective date of this act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after allowing the association the opportunity to present its views, adopt and promulgate such reasonable rules as are necessary and advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under the provisions of this act will be performed;

(b) Establish procedures for handling the assets of the association;

(c) Establish the amount and method of reimbursing members of the board of directors under the provisions of section 5 of this act;

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) Establish regular places and times for meetings of the board of directors;

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the director within sixty days after the action or decision;

(h) Establish the procedures whereby selection of the board of directors will be submitted to the director for approval; and

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association are delegated to a corporation, association, or other organization which performs, or will perform, functions similar to those of the association, or its equivalent, in two or more states. Such corporation, association, or organization, shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Sec. 9. (1) The director shall:

(a) Notify the association of the existence of any insolvent insurer, as defined in section 3 of this act, not later than three days after he receives notice of the determination of the insolvency and order of liquidation pursuant to section 44-127, Reissue Revised Statutes of Nebraska, 1943; and

(b) Upon request of the board of directors of the association, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

(a) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due, unless such payment was deferred by the association in the manner provided in this act, or fails to comply with the plan of operation; and

(b) Revoke the designation of any servicing facility if he finds the claims are not being handled in good faith. Designation of a new servicing agency shall be accomplished in the manner set out in section 7 (1) (b) of this act.

Sec. 10. (1) Any person recovering under the provisions of this act shall be deemed to have assigned his rights under the policy to the association to the extent of such recovery from the association. Every insured or claimant seeking recovery under the provisions of this act shall be required to cooperate with the association to the same extent he would have been required to cooperate with the insolvent insurer.

(2) Notice of claims to the liquidator or receiver of the insolvent member insurer shall be deemed notice to the association or its agent, and a list of covered claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(3) The receiver, liquidator or statutory successor of an insolvent member insurer shall be bound by settlements of covered claims by the association or a similar organization in another state.

(4) The covered claims paid by the association, and expenses of the association or similar organization in handling claims under the provisions of this act, shall be deemed the expenses of the liquidator and accorded the same priority for payment as the liquidator's expenses.

(5) The association shall periodically file with the director statements of covered claims paid by the association and estimates of anticipated claims against the association.

Sec. 11. (1) Any person having a claim against his own insurer under any provisions of his own insurance policy, which claim is also a covered claim against an insolvent member insurer under the provisions of this act, shall be required to exhaust all of his rights under his own policy before the association is obligated to pay the covered claim under this act. Any amount payable on a covered claim by the provisions of this act shall be reduced by the amount of such recovery under the claimant's own insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty

association, or its equivalent, shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workmen's compensation claim, from the association of the residence of the claimant. Any recovery under the provisions of this act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

Sec. 12. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the director of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public;

(2) The board of directors may, upon majority vote, request that the director order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the director shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such qualified persons as the director designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. The director shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the director but it shall not be open to public inspection prior to the release of the examination report to the public;

(3) It shall be the duty of the director to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined may be insolvent or in a financial condition hazardous to the policyholders or the public. Such report to the board of directors shall not be considered a release to the public under applicable insurer examination statutes;

(4) The board of directors may, upon majority vote, make reports and recommendations to the director upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer.

Such reports and recommendations shall not be considered public documents;

(5) The board of directors may, upon majority vote, make recommendations to the director for the detection and prevention of insurer insolvencies; and

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the director.

Sec. 13. The association shall be subject to examination and regulation by the director. Any such examination conducted pursuant to the provisions of this section shall be paid for by the association. The board of directors shall submit to the director, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the director.

Sec. 14. The association shall be exempt from the payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Sec. 15. There shall be no liability on the part of, and no cause of action of any nature shall rise against, any member insurer, the association or its agents or employees, the board of directors of the association, any servicing facility designated by the association in accordance with the provisions of this act or the agents or employees or officers of such servicing facility, or the director or his representatives for any action taken by them in the performance of their powers and duties under the provisions of this act.

Sec. 16. Advertisements by member insurers which include a reference to the coverage of the insurance guaranty association are specifically prohibited.

Sec. 17. Assessments made by the insurance guaranty associations, or similar entities, pursuant to the laws of any other state shall not be considered taxes, licenses, other fees, other material obligations, prohibitions, or restrictions as those terms are defined in section 44-150, Reissue Revised Statutes of Nebraska, 1943.

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Sec. 18. This act shall be known and may be cited as the Nebraska Insurance Guaranty Association Act.

Sec. 19. That sections 22 to 32, Legislative Bill 572, Eighty-second Legislature, First Session, 1971, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.