

LEGISLATIVE BILL 52

Approved by the Governor February 28, 1997

Introduced by Landis, 46

AN ACT relating to insurance companies; to amend sections 44-205, 44-231, 44-2127, 44-6101, 44-6107, 44-6108, 44-6109, 44-6115, 44-6117, 44-6119, and 44-6120, Reissue Revised Statutes of Nebraska; to change filing requirements relating to articles of incorporation; to change and provide procedures for demutualization; to provide for confidentiality of filings; to provide for enforcement of the Insurers Demutualization Act; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 44-205, Reissue Revised Statutes of Nebraska, is amended to read:

44-205. Five or more natural persons may act as incorporators of an insurance corporation. The articles of incorporation shall be signed by each incorporator and delivered to the Department of Insurance for approval or disapproval, and if approved and found by it to be in accordance with the laws of this state, the department shall so certify. When such articles are thus approved, they shall be filed in the office of the Secretary of State and a duplicate copy bearing the date of filing in the office of the Secretary of State shall be recorded in the office of the county clerk of the county in which the registered office of the company is located in this state, and a copy as filed and recorded shall be filed in the office of the department. Upon the filing and recording of the articles of incorporation in the office of the Secretary of State as provided in this section corporate existence shall commence.

Sec. 2. Section 44-231, Reissue Revised Statutes of Nebraska, is amended to read:

44-231. Except as otherwise provided in the Insurers Demutualization Act, any domestic insurance company, association, or society, hereinafter called company, may amend its articles of incorporation from time to time without limitation so long as the articles as amended contain only such provisions as are authorized in original articles of incorporation under Chapter 44. Proposed amendments to the articles shall be made in the following manner:

(1) The board of directors of such company shall adopt, by a two-thirds vote of all of the directors thereof, the proposed amendments to the articles of incorporation;

(2) Prior to the meeting of the shareholders or members at which the proposed amendments are to be considered, the proposed amendments, with all matters relating thereto, shall be submitted to the Department of Insurance for examination. If satisfied that the interests of the policyholders of such company and all concerned are properly protected and that no reasonable objections exist to the proposed amendments to the articles, the department may approve the same or it may require change or modification prior to any approval, as it may deem best for the interest of those affected; and

(3) If the Department of Insurance requires any changes or modifications of the proposed amendments to the articles of incorporation, such amendments shall be in turn submitted to and be adopted by a two-thirds vote of all the directors of such company. The proposed amendments to the articles of incorporation as originally adopted or readopted, as the case may be, shall then be submitted to the shareholders or members of the company entitled to vote for adoption at a regular meeting or a special meeting thereof.

Except as hereinafter provided, notice of such a special meeting together with a description of the proposed amendment to the articles of incorporation shall be given to each shareholder or member entitled to vote in the manner authorized or approved by the department at least thirty days prior thereto.

If the proposed amendments to the articles of incorporation are to be considered at a regular annual meeting of the members or shareholders, the Director of Insurance may, in his or her discretion, require the giving of the same notice as is required for a special meeting.

If the proposed amendments to the articles of incorporation are to be considered at a special meeting of the members of a mutual or assessment company or at a regular annual meeting thereof, notice of which has been

required, the Director of Insurance may, upon application of the board of directors of such company, permit the company to exclude from the members entitled to notice those who in the opinion of the director are not reasonably ascertainable.

If the proposed amendments to the articles of incorporation are adopted by a two-thirds vote of all the stock, if a stock company, by a vote of two-thirds of the members voting at such meeting in person or by proxy, if a mutual or assessment company, or pursuant to the Insurers Demutualization Act, then they shall be filed in the same offices as original articles of incorporation as provided in section 44-205, and the same notice shall be published.

Sec. 3. Section 44-2127, Reissue Revised Statutes of Nebraska, is amended to read:

44-2127. (1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 44-2126 unless, after a public hearing thereon, he or she finds that:

(a) After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) To the extent required under section 44-6115, an acquisition has not been approved by the director; or

(g) The acquisition is likely to be hazardous or prejudicial to the public.

(2) The public hearing referred to in subsection (1) of this section shall be held within thirty days after the statement required by subsection (1) of section 44-2126 is filed, and at least twenty days' notice thereof shall be given by the director to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) The director may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control.

Sec. 4. Section 44-6101, Reissue Revised Statutes of Nebraska, is amended to read:

44-6101. Sections 44-6101 to 44-6120 and sections 9 to 13, 16, and 17 of this act shall be known and may be cited as the Insurers Demutualization Act.

Sec. 5. Section 44-6107, Reissue Revised Statutes of Nebraska, is amended to read:

44-6107. The director shall conduct a public hearing within one hundred and twenty days after the date the application is filed pursuant to section 44-6105 unless extended by the director for good cause. Any interested person may appear or otherwise be heard at the public hearing. The director may in his or her discretion continue the public hearing for a reasonable period of time not to exceed sixty days. The mutual insurer applying to convert to a stock insurer shall give such reasonable notice of the public hearing as the director in his or her discretion shall require.

Sec. 6. Section 44-6108, Reissue Revised Statutes of Nebraska, is amended to read:

44-6108.

(1) The director shall issue an order making an initial determination to approve or disapprove the application within thirty days after the close of the public hearing as required by section 44-6107.

(2)(a) The director shall not approve the application unless he or she finds that:

(a) (i) The plan of conversion is fair and equitable to the policyholders;

(b) (ii) The plan of conversion does not deprive the policyholders of their property rights or due process of law; and

(c) (iii) The new stock insurer would meet the minimum requirements to be issued a certificate of authority by the director to transact business in this state and the continued operations of the new stock insurer would not be hazardous to future policyholders and the public.

(b) For purposes of this subsection, the director may consider any relevant factor, including, but not limited to:

(i) The capital requirements of the new stock insurer;

(ii) Whether a portion of the statutory surplus has been contributed by persons or entities whose policies or contracts are not in force on the date the plan of conversion is initially approved by the board of directors of the mutual insurer and, in such event, the consideration to policyholders may be less than the statutory surplus;

(iii) Whether the plan of conversion includes preemptive rights for policyholders to purchase securities offered in the initial sale of securities by the new stock insurer; and

(iv) Whether the plan of conversion includes establishment of a preference account from which the payment of any shareholder dividends, including a regular, special, or liquidation dividend, would be prohibited for a reasonable period of time as the director may require.

(3) If the director makes a determination to disapprove the application, the director shall issue a final order setting forth specific findings for the disapproval.

Sec. 7. Section 44-6109, Reissue Revised Statutes of Nebraska, is amended to read:

44-6109. Within forty-five days after the date of the director's initial determination of approval pursuant to section 44-6108, unless extended by the director for good cause, the mutual insurer shall hold a meeting of its policyholders at a reasonable time and place to vote upon the plan of conversion. The mutual insurer shall give notice at least thirty days before the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of conversion will be voted upon at a regular or special meeting of the policyholders, which notice shall include a brief description of the plan of conversion and a statement that the director has initially approved the plan of conversion. The notice mailing to each policyholder shall also include a written proxy permitting the policyholder to vote for or against the plan of conversion. The entity to which any group insurance policy is issued, and not any person covered under the group insurance policy, shall be considered the policyholder for purposes of voting. A plan of conversion shall be approved only if not less than two-thirds of the policyholders voting in person or by proxy at the meeting vote in favor of such plan of conversion. Each policyholder shall be entitled to only one vote regardless of the number of policies owned by the policyholder. The mutual insurer shall file a certification with the director setting forth the vote. The director shall supervise and direct the conduct of the vote on the plan of conversion as necessary to ensure that the vote is fair and consistent with the requirements of this section. The director shall enter a final order approving the application to convert to a stock insurer within ten days after receiving a valid certification from the mutual insurer setting forth the vote and certifying that the plan of conversion was approved by not less than two-thirds of the policyholders voting in person or by proxy on the plan of conversion. In such event, the director shall also publish notification of the issuance of the final order in a legal newspaper in Lancaster County and in the county of domicile of the mutual insurer if different than Lancaster County.

Sec. 8. Section 44-6115, Reissue Revised Statutes of Nebraska, is amended to read:

44-6115. (1)(a) Except as otherwise specifically provided in section 44-6116 the plan of conversion, prior to and for a period of five years following the issuance of a certificate of authority to a new stock insurer under the Insurers Demutualization Act, no person other than the new stock insurer shall, without the prior approval of the director, directly or

indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of the new stock insurer or of any institution which owns a majority or all of the voting securities of the new stock insurer without the prior approval by the director of an application for acquisition filed by such person with the director.

(b) The director shall not approve an application for acquisition filed pursuant to subdivision (1)(a) of this section unless he or she finds that:

(i) The acquisition would not frustrate the plan of conversion as approved by the policyholders and the director;

(ii) The board of directors of the new stock insurer has approved the acquisition or extraordinary circumstances not contemplated in the plan of conversion have arisen which would warrant approval of the acquisition; and

(iii) The acquisition would be consistent with the legislative purpose of the Insurers Demutualization Act to permit conversions on terms and conditions that are fair and equitable to the policyholders.

(c) An application for acquisition filed pursuant to subsection (1) of this section shall describe in sufficient detail the information to be considered under subdivision (1)(b) of this section.

(d) If any material change occurs in the facts set forth in an application for acquisition filed pursuant to subsection (1) of this section, an amendment setting forth the change, together with copies of all documents and other material relevant to such change, shall be filed with the director.

(2) The director may hold a public hearing on an application for acquisition filed pursuant to subsection (1) of this section unless the board of directors of the new stock insurer has approved the acquisition. The public hearing shall be held within thirty days after the person seeking to acquire securities files an application for acquisition with the director pursuant to subsection (1) of this section, with at least twenty days' notice of the hearing given by the director to the person filing the application for acquisition. Not less than seven days' notice of the hearing shall be given by the person filing the application for acquisition to the new stock insurer and to such other persons as may be designated by the director. At the hearing the person filing the application for acquisition, the new stock insurer, any person to whom notice of the hearing was sent, and any other person whose interest may be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith, may conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the hearing. If any offer or acquisition referred to in the application for acquisition is proposed by means of a registration statement under the federal Securities Act of 1933, in circumstances requiring the disclosure of similar information under the federal Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement may utilize such documents in furnishing the information called for by the application for acquisition. The person filing the application shall serve the new stock insurer and any institution which owns a majority or all of the voting securities of the new stock insurer with a copy of the application for acquisition and any amendments thereto on the day such documents are filed with the director.

(3) The new stock insurer and any institution which owns a majority or all of the voting securities of the new stock insurer shall be permitted to become a party upon their request.

(4) The director shall make a determination within thirty days after the conclusion of the hearing or, if no hearing is held, within thirty days after the date the application for acquisition is filed with the director pursuant to subsection (1) of this section. Approval or disapproval of an application for acquisition shall be by written order. The order may be appealed to the district court of Lancaster County, and the appeal shall be in accordance with the Administrative Procedure Act.

(5) The director may retain, at the expense of the person filing an application for acquisition pursuant to subsection (1) of this section, any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the application.

Sec. 9. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired in contravention of section 44-6115 or of any rule, regulation, or order of the director may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not

issued and outstanding, but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the new stock insurer or an institution which owns a majority or all of the voting securities of the new stock insurer or unless the courts of this state have so ordered. If a new stock insurer or the director has reason to believe that any security of the new stock insurer or an institution which owns a majority or all of the voting securities of the new stock insurer has been or is about to be acquired in contravention of the Insurers Demutualization Act or of any rule, regulation, or order of the director, the new stock insurer or the director may apply to the district court of Lancaster County for an order to enjoin any offer or acquisition made in contravention of section 44-6115 or any rule, regulation, or order of the director to enjoin the voting of any security so acquired, to void any vote of such security already cast at any shareholders' meeting, and for such other equitable relief as the nature of the case and the interest of the new stock insurer's policyholders, creditors, and shareholders or the public may require.

Sec. 10. In any case when a person has acquired or is proposing to acquire any voting securities in violation of the Insurers Demutualization Act or any rule, regulation, or order of the director, the district court of Lancaster County may, on such notice as the court deems appropriate, upon the application of the director or the new stock insurer seize or sequester any voting securities of the new stock insurer or an institution which owns a majority or all of the voting securities of the new stock insurer owned directly or indirectly by such person and issue such order with respect thereto as may be appropriate to effectuate the act. Notwithstanding any other provisions of law, for purposes of the act, situs of the ownership of such securities shall be deemed to be in this state.

Sec. 11. Any person who fails to file an application for acquisition and obtain the prior approval of the director as required by section 44-6115 may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the person demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the person.

Sec. 12. Any director or officer of a person or an agent of the person who knowingly violates or assents to or permits any officer or agent of the person to violate the requirements of section 44-6115 may be required by the Director of Insurance, after notice and hearing, to pay, in his or her individual capacity, an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the Director of Insurance shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Sec. 13. Whenever it appears to the director that any person or any director, officer, employee, or agent of the person has engaged in any conduct in violation of section 44-6115, the director may order the person to cease and desist immediately any further activity. After notice and hearing, the director may also order the person to void any contracts and restore the status quo if such action is in the best interest of the policyholders, the creditors, or the public.

Sec. 14. Section 44-6117, Reissue Revised Statutes of Nebraska, is amended to read:

44-6117. (1)(a) No director, officer, employee, or agent of the mutual insurer and no other person shall receive any fee, commission, or other valuable consideration whatsoever, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in a plan of conversion except as set forth in the plan of conversion approved by the director. This

(b) Subdivision (1)(a) of this section shall not prohibit a management-incentive compensation program which is contained in the plan of conversion and approved by the director to be adopted upon conversion to the new stock insurer or prohibit such a program to be later adopted by the new stock insurer.

(c) All fees, commissions, compensation, and valuable consideration described in this subsection shall be subject to the restrictions on salary, compensation, and emoluments in section 44-213.

(2) Subdivision (1)(a) of this This section shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions even though any such person is also a member of the board of directors of the mutual insurer.

Sec. 15. Section 44-6119, Reissue Revised Statutes of Nebraska, is amended to read:

44-6119. For the purpose of determining whether a plan of conversion meets the requirements of the Insurers Demutualization Act or in connection with any other matters relating to development of a plan of conversion, the director may engage the services of experts. All reasonable costs related to the review of a plan of conversion or such other matters, including those costs attributable to the use of experts, shall be paid by the mutual insurer making the filing or initiating discussions with the director about such matters.

Sec. 16. All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of preparing, filing, and processing an application to convert to a stock insurer pursuant to section 44-6105, other than information or documents distributed to policyholders in connection with the meeting of policyholders under section 44-6109 or filed or submitted as evidence in connection with the public hearing under section 44-6107, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Sec. 17. Whenever it appears to the director that any person or any director, officer, employee, or agent of the person has committed or is about to commit a violation of the Insurers Demutualization Act or of any rule, regulation, or order of the director, the director may apply to the district court of Lancaster County for an order enjoining such person, director, officer, employee, or agent from violating or continuing to violate the act or any such rule, regulation, or order and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

Sec. 18. Section 44-6120, Reissue Revised Statutes of Nebraska, is amended to read:

44-6120. The director may adopt and promulgate rules and regulations and issue orders to carry out the Insurers Demutualization Act.

Sec. 19. Sections 1, 2, 19, 21, and 22 of this act become operative on their effective date. The other sections of this act become operative three calendar months after adjournment of this legislative session.

Sec. 20. Original sections 44-2127, 44-6101, 44-6107, 44-6108, 44-6109, 44-6115, 44-6117, 44-6119, and 44-6120, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 21. Original sections 44-205 and 44-231, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 22. Since an emergency exists, this act takes effect when passed and approved according to law.