

LEGISLATIVE BILL 326

Approved by the Governor February 24, 1999

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-322, 44-516, 44-522, 44-523, 44-6105, 44-6106, 44-6108, 44-6116, and 60-304, Reissue Revised Statutes of Nebraska, and section 81-1021, Revised Statutes Supplement, 1998; to change filing provisions, cancellation requirements, demutualization procedures, and motor vehicle license plate requirements; to require a statement of allowable benefits; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Section 44-322, Reissue Revised Statutes of Nebraska, is amended to read:

44-322. (1)(a)(i) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall file with the director on or before March 1 of each year an annual financial statement for the year ending December 31 immediately preceding on forms prescribed by the director which conform substantially to the forms adopted by the National Association of Insurance Commissioners. ~~Unless~~

(ii)(A) Before January 1, 2001, unless the director provides otherwise, the financial statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and shall include the salaries and compensation of the officers and any other information required by the director.

(B) On and after January 1, 2001, the financial statement shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals adopted by the National Association of Insurance Commissioners and shall include the salaries and compensation of the officers and any other information required by the director.

(iii) Every insurance company subject to this section shall make such other periodic financial filings as the director may reasonably require.

~~The director shall suspend or shall not issue or renew the certificate of authority of an insurance company until it has complied with the requirements of this subsection and any rules and regulations or orders issued thereunder, except that for good and sufficient cause shown the director may grant a reasonable extension of time within which the financial statement may be filed, in no event to exceed thirty days. In addition to or in lieu of suspension or refusal to issue or renew the certificate of authority, the director may order an insurance company which fails to comply with the requirements of this subsection and any rules and regulations or orders issued thereunder to pay an administrative penalty of five hundred dollars and an additional penalty of not to exceed five hundred dollars for each day thereafter such failure continues and the company continues to transact any business of insurance.~~

(b)(i) Within seven days after the failure of an insurance company to comply with the requirements of subdivision (1)(a) of this section, the director shall notify the insurance company of such failure.

(ii) Subject to subdivision (1)(b)(iii) of this section, if an insurance company fails to comply with the requirements of subdivision (1)(a) of this section and any rules and regulations adopted and promulgated under such subdivision and any orders issued under such subdivision, (A) such insurance company shall forfeit one hundred dollars for each day thereafter such failure continues and the insurance company continues to transact any business of insurance and (B) in addition to the forfeiture required under subdivision (1)(b)(ii)(A) of this section, the director may suspend or refuse to renew the certificate of authority of the insurance company until it has complied with the requirements of subdivision (1)(a) of this section and any rules and regulations adopted and promulgated under such subdivision and any orders issued under such subdivision. All such forfeitures collected by the director shall be remitted to the State Treasurer for credit to the permanent school fund.

(iii) For good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty days within which the

financial statement may be filed as required under subdivision (1)(a) of this section without the forfeiture required under subdivision (1)(b)(ii)(A) of this section and without any suspension or refusal to renew authorized under subdivision (1)(b)(ii)(B) of this section.

(2) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall participate in the National Association of Insurance Commissioners Insurance Regulatory Information System, including the payment of all fees and charges of such system, except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners on or before March 1 of each year a copy of its annual financial statement along with any additional filings required by the director for the immediately preceding year. The financial statement so filed shall be in the same format and scope as that required by subsection (1) of this section and shall include a signed jurat page and actuarial certification except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners any amendments and addendums to the financial statement and annual and quarterly financial statement information in computer readable format as required by the Insurance Regulatory Information System.

Sec. 2. Section 44-516, Reissue Revised Statutes of Nebraska, is amended to read:

44-516. (1) No notice of cancellation of a policy to which section 44-515 applies shall be effective unless mailed by registered or certified mail to the named insured at least thirty days prior to the effective date of cancellation, except that if ~~PROVIDED~~, that where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor shall be given. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(2) The insurer shall, upon such written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) This section shall not apply to nonrenewal.

Sec. 3. Section 44-522, Reissue Revised Statutes of Nebraska, is amended to read:

44-522. (1) The Department of Insurance shall not approve any insurance policy filed for approval with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains ~~an appropriate provision~~ provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

- (a) Nonpayment of premium;
- (b) The policy was obtained through a material misrepresentation;
- (c) Any insured has submitted a fraudulent claim;
- (d) Any insured has violated any of the terms and conditions of the policy;
- (e) The risk originally accepted has substantially increased;

(f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

(4) Notice of cancellation or nonrenewal shall be sent by registered, certified, or first-class mail to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile liability coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.

(6) All policy forms issued for delivery in Nebraska shall conform to this section.

Sec. 4. Section 44-523, Reissue Revised Statutes of Nebraska, is amended to read:

44-523. (1)(a) Except as provided in subdivision (1)(b) of this section, a notice of cancellation, given for reasons other than for nonpayment of premium, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered or certified mail to the named insured at the address shown in the policy at least thirty days prior to the effective date of such cancellation.

(b) A notice of cancellation, initiated by a premium finance company, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered or certified mail to the named insured at the address shown in the policy at least ten days prior to the effective date of such cancellation.

(2) This section shall not apply ~~(1)~~ (a) to any policy subject to sections 44-514 to 44-521, ~~(2)~~ (b) to any policy issued under an automobile assigned-risk plan or to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of the insured or on the ways adjoining such premises, and ~~(3)~~ (c) to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Any attempted cancellation in violation of the provisions of this section shall be void.

Sec. 5. (1) Any individual or group sickness and accident insurance policy or subscriber contract, any hospital, medical, or surgical expense-incurred policy, and any prepaid dental service plan that is issued for delivery, delivered, or renewed in this state, except policies that provide coverage for a specified disease or other limited benefit coverage and health maintenance organization contracts, that provides for payment of claims based upon a specific methodology including, but not limited to, usual and customary charges, reasonable and customary charges, maximum benefit allowance, or charges based upon the prevailing rate in the community, shall provide that, upon request, a policyholder, certificate holder, covered dependent, or authorized representative shall be provided a written statement that includes a good faith estimate of the dollar amount of the allowable benefit for a service or procedure if the request includes information regarding any service or procedure to be performed by a nonpreferred provider, including any service or procedure code number or diagnosis related group provided by the health care provider and the health care provider's estimated charge.

(2) A statement requested pursuant to this section shall be sent to the policyholder, certificate holder, covered dependent, or authorized representative within ten business days after receipt of the request from the policyholder, certificate holder, covered dependent, or authorized representative.

(3) The insurer or other entity that provides a statement pursuant to and in compliance with this section shall not be bound by a good faith estimate, except that a pattern of providing estimates that vary significantly from the ultimate payment shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act.

Sec. 6. Section 44-6105, Reissue Revised Statutes of Nebraska, is amended to read:

44-6105. A domestic mutual insurer may convert to a stock insurer by meeting the requirements of the Insurers Demutualization Act. The mutual insurer shall file an application to convert to a stock insurer with the director. The application shall be accompanied by a nonrefundable application fee of one thousand dollars. The application shall include the following at a minimum:

(1) A plan of conversion containing a description of the structure and form of the proposed consideration to the policyholders, the projected range of the number of shares of capital stock to be issued by the new stock insurer or the holding company of such insurer, whether to policyholders, to be sold or reserved for sale to investors by the new stock insurer or the holding company of such insurer, or to a trust established for the exclusive benefit of policyholders for the purpose of effecting the conversion into which shares of the capital stock of the new stock insurer or the holding company of such insurer are placed pending distribution to the policyholders, and such other proposed conditions and provisions as determined by the mutual insurer not to be inconsistent with the act;

(2) A certification that the plan of conversion has been duly adopted by a vote of not less than two-thirds of the members of the board of directors of the mutual insurer;

(3) A certification adopted by not less than two-thirds of the members of the board of directors of the mutual insurer that the plan of conversion is fair and equitable to the policyholders;

(4) Certified copies of the proposed amendments to the articles of incorporation and bylaws to effectuate the conversion;

(5) A form of the proposed notice to be mailed by the mutual insurer to its policyholders as required in section 44-6109; and

(6) Any other additional information as the director may reasonably request.

Sec. 7. Section 44-6106, Reissue Revised Statutes of Nebraska, is amended to read:

44-6106. The plan of conversion required by section 44-6105 shall specify the consideration to the policyholders entitled thereto, which consideration may be in cash, stock, a combination thereof, or such other valuable consideration as the director may approve. The plan of conversion may, subject to the approval of the director, provide that all or any portion of the consideration distributable to policyholders may be held in a trust, the terms of which are subject to the approval of the director, established by the mutual insurer for a period not greater than three years, which period may be extended beyond three years for additional annual periods not to exceed five years in the aggregate, with the approval of the director, pursuant to and subject to limitations set forth in the plan of conversion. Unless otherwise ordered by the director and notwithstanding any provisions of law to the contrary, policyholders are not required to be given preemptive rights.

Sec. 8. 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:

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

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

(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;

(v) The suitability of the trustees of any trust created pursuant to the provisions of section 44-6106; and

(vi) Whether the utilization of a trust, if included in the plan of conversion, has a material adverse effect on policyholders, other than delaying receipt of shares of capital stock.

(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. 9. Section 44-6116, Reissue Revised Statutes of Nebraska, is amended to read:

44-6116. Nothing in the Insurers Demutualization Act shall prohibit the inclusion in the plan of conversion of provisions under which individuals comprising the new stock insurer's board of directors, officers, employees, agents, and persons acting as trustees of employee stock ownership plans or other employee benefit plans may be entitled to purchase for cash capital stock of the new stock insurer at the same price initially issued by the new stock insurer under the plan of conversion but no such purchase may be made while any shares of capital stock are held in a trust established pursuant to the plan of conversion.

Sec. 10. Section 60-304, Reissue Revised Statutes of Nebraska, is amended to read:

60-304. (1)(a) Undercover license plates may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control or for the prevention and control of those communicable diseases which endanger the public health, the Department of Health and Human Services Regulation and Licensure in the enforcement of drug control laws or for other investigation purposes, and the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personal vehicles or for personal use of government vehicles.

(b) The Director of Motor Vehicles shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personal vehicles or for personal use of government vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-311. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover license plates to the Department of Motor Vehicles if:

- (a) The undercover license plates expire and are not renewed;
 - (b) The purpose for which the undercover license plates were issued has been completed or terminated; or
 - (c) The director requests their return.
- (6) A state agency, board, or commission that uses motor vehicles

from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license number and the undercover license plates' numbers to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure. Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each vehicle, and the person who is assigned to the vehicle. This record shall be confidential and not be subject to public disclosure.

Sec. 11. Section 81-1021, Revised Statutes Supplement, 1998, is amended to read:

81-1021. (1) All motor vehicles acquired by the State of Nebraska shall be indelibly and conspicuously lettered, in plain letters of a contrasting color or reflective material:

(a) On each side thereof with the words State of Nebraska and following such words the name of whatever board, department, bureau, division, institution, including the University of Nebraska or state college, office, or other state expending agency of the state to which the motor vehicle belongs; and

(b) On the back thereof with the words State of Nebraska.

(2) This section shall not apply to motor vehicles used or controlled by:

(a) The Nebraska State Patrol, the Public Service Commission, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, inspectors employed by the Nebraska Liquor Control Commission, and persons employed by the Tax Commissioner for state revenue enforcement purposes, the exemption for state law enforcement purposes and state revenue enforcement purposes being confined strictly to the seven agencies specifically named;

(b) The Department of Health and Human Services or the Department of Correctional Services for the purpose of apprehending and returning escaped offenders or parole violators to facilities in the Department of Correctional Services and transporting offenders and personnel of the Department of Correctional Services and patients and personnel of the Department of Public Institutions until January 1, 1997, and on and after January 1, 1997, the Department of Health and Human Services who are engaged in off-campus program activities;

(c) The Military Department;

(d) Vocational rehabilitation counselors and the Department of Health and Human Services for the purposes of communicable disease control, for the prevention and control of those communicable diseases which endanger the public health, or used by the Department of Health and Human Services Regulation and Licensure in the enforcement of drug control laws or for other investigation purposes;

(e) The Department of Agriculture for special investigative purposes; ~~and~~

(f) The Nebraska Motor Vehicle Industry Licensing Board for investigative purposes; ~~and~~

(g) The Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes.

Sec. 12. The Revisor of Statutes shall assign section 5 of this act to Chapter 44, article 7.

Sec. 13. Original sections 44-322, 44-516, 44-522, 44-523, 44-6105, 44-6106, 44-6108, 44-6116, and 60-304, Reissue Revised Statutes of Nebraska, and section 81-1021, Revised Statutes Supplement, 1998, are repealed.