

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 380**

Introduced by La Grone, 49.

Read first time January 17, 2019

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Nebraska Property and Liability  
2 Insurance Guaranty Association Act; to amend sections 44-2403,  
3 44-2406, 44-2407, 44-2409, and 44-2411, Reissue Revised Statutes of  
4 Nebraska; to redefine terms; to change obligations for covered  
5 claims; to change association duties and authorizations as  
6 prescribed; to change provisions relating to the exhaustion of  
7 remedies by claimants; to provide for a stay in proceedings; to  
8 harmonize provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-2403, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 44-2403 As used in the Nebraska Property and Liability Insurance  
4 Guaranty Association Act, unless the context otherwise requires:

5 (1) Account shall mean any one of the three accounts created by  
6 section 44-2404;

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

9 (3) Association shall mean the Nebraska Property and Liability  
10 Insurance Guaranty Association created by section 44-2404;

11 (4)(a) Covered claim shall mean an unpaid claim ~~which has been~~  
12 ~~timely filed with the liquidator~~ as provided for in the Nebraska Insurers  
13 Supervision, Rehabilitation, and Liquidation Act and which arises out of  
14 and is within the coverage of an insurance policy to which the Nebraska  
15 Property and Liability Insurance Guaranty Association Act applies issued  
16 by a member insurer that becomes insolvent after May 26, 1971, and (i)  
17 the claimant or insured is a resident of this state at the time of the  
18 insured event or (ii) the property from which the claim arises is  
19 permanently located in this state. Covered claim shall also include the  
20 policyholder's unearned premiums paid by the policyholder on an insurance  
21 policy to which the act applies issued by a member insurer that becomes  
22 insolvent on or after July 9, 1988. Nothing in this section shall be  
23 construed to supersede, abrogate, or limit the common-law ownership of  
24 accounts receivable for earned premium, unearned premium, or unearned  
25 commission;

26 (b) Covered claim shall not include any amount due any reinsurer,  
27 insurer, liquidator, insurance pool, or underwriting association, as  
28 subrogation recoveries or otherwise, a ~~policy deductible or~~ self-insured  
29 portion of the claim, a claim for any premium calculated on a  
30 retrospective basis, any premiums subject to adjustment after the date of  
31 liquidation, or any amount due an attorney or adjuster as fees for

1 services rendered to the insolvent insurer. Covered claim shall also not  
2 include any amount as punitive or exemplary damages or any amount claimed  
3 for incurred but not reported damages. Covered claim shall also not  
4 include any claim filed with the guaranty fund after the earlier of  
5 twenty-five months after the dates of the order of liquidation or the  
6 final date set by the court for the filing of claims against the  
7 liquidator or receiver. Subdivision (4)(b) of this section shall not  
8 prevent a person from presenting the excluded claim to the insolvent  
9 insurer or its liquidator, but the claim shall not be asserted against  
10 any other person, including the person to whom benefits were paid or the  
11 insured of the insolvent insurer, except to the extent that the claim is  
12 outside the coverage or is in excess of the limits of the policy issued  
13 by the insolvent insurer;

14 (5) Insolvent insurer shall mean a member insurer licensed to  
15 transact the business of insurance in this state, either at the time the  
16 policy was issued or when the insured event occurred, and against whom a  
17 final order of liquidation, with a finding of insolvency, has been  
18 entered by a court of competent jurisdiction in the company's state of  
19 domicile after September 2, 1977;

20 (6) Member insurer shall mean any person licensed to write any kind  
21 of insurance to which the Nebraska Property and Liability Insurance  
22 Guaranty Association Act applies by the provisions of section 44-2402,  
23 including the exchange of reciprocal or interinsurance contracts, that is  
24 licensed to transact insurance in this state, except assessment  
25 associations operating under Chapter 44, article 8, and also excepting  
26 unincorporated mutuals;

27 (7) Net direct written premiums shall mean direct gross premiums  
28 written in this state on insurance policies to which the Nebraska  
29 Property and Liability Insurance Guaranty Association Act applies, less  
30 return premiums thereon and dividends paid or credited to policyholders  
31 on such direct business. Net direct written premiums shall not include

1 premiums on contracts between insurers or reinsurers;

2 (8) Person shall mean any individual, corporation, partnership,  
3 limited liability company, association, voluntary organization, or  
4 reciprocal insurance exchange; and

5 (9) Insurance shall mean those contracts defined in section 44-102.

6 Sec. 2. Section 44-2406, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 44-2406 (1) The association shall be obligated only to the extent of  
9 the covered claims existing prior to the date a member insurer ~~company~~  
10 becomes an insolvent insurer or arising within thirty days after it has  
11 been determined that the insurer is an insolvent insurer, before the  
12 policy expiration date, if less than thirty days after such  
13 determination, or before the insured replaces the policy or on request  
14 effects cancellation, if he or she does so within thirty days of such  
15 dates, but such obligation shall include only the ~~that~~ amount of each  
16 covered claim that does not exceed ~~which is in excess of one hundred~~  
17 ~~dollars and is less than~~ three hundred thousand dollars, except that the  
18 association shall pay the amount required by law on any covered claim  
19 arising out of a workers' compensation policy. In no event shall the  
20 association be obligated to a policyholder or claimant in an amount in  
21 excess of the face amount of the policy from which the claim arises. The  
22 association shall be obligated on covered claims, including those under a  
23 workers' compensation policy, for unearned premiums only for the ~~that~~  
24 amount of each covered claim that does not exceed ~~which is in excess of~~  
25 ~~one hundred dollars and is less than~~ ten thousand dollars per policy.

26 (2) The director shall transmit to the association all covered  
27 claims timely filed with him or her pursuant to the Nebraska Insurers  
28 Supervision, Rehabilitation, and Liquidation Act. The association shall  
29 thereupon be considered to have been designated the director's  
30 representative pursuant to the act, and it shall proceed to investigate,  
31 hear, settle, and determine such claims unless the claimant shall, within

1 thirty days from the date the claim is filed with the director, file with  
2 the director a written demand that the claim be processed in the  
3 liquidation proceedings as a claim not covered by the Nebraska Property  
4 and Liability Insurance Guaranty Association Act. In regard to those  
5 claims transmitted to the association by the director, the association  
6 and claimants shall have all of the rights and obligations and be subject  
7 to the same limitations and procedures as are specified in the Nebraska  
8 Insurers Supervision, Rehabilitation, and Liquidation Act for the  
9 determination of claims.

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

1 provisions of the Nebraska Property and Liability Insurance Guaranty  
2 Association Act.

3 (4) A third party having a covered claim against any insured of an  
4 insolvent ~~member~~ insurer may file such claim with the director pursuant  
5 to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation  
6 Act, and the association shall process such claim in the manner specified  
7 in subsections (2) and (3) of this section. The filing of such claim  
8 shall constitute an unconditional general release of all liability of  
9 such insured in connection with the claim unless the association  
10 thereafter denies the claim for the reason that the insurance policy  
11 issued by the insolvent insurer ~~member company~~ does not afford coverage  
12 or unless the claimant, within thirty days from the date of filing his or  
13 her claim with the director, files with the director a written demand  
14 that the claim be processed in the liquidation proceedings as a claim not  
15 covered by the Nebraska Property and Liability Insurance Guaranty  
16 Association Act.

17 Sec. 3. Section 44-2407, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 44-2407 (1) The association shall:

20 (a) Allocate claims paid and expenses incurred among the three  
21 accounts separately and assess member insurers separately for each  
22 account in the amounts necessary to pay the obligations of the  
23 association under section 44-2406, the expenses of handling covered  
24 claims, the cost of examinations under sections 44-2412 and 44-2413, and  
25 other expenses authorized by the Nebraska Property and Liability  
26 Insurance Guaranty Association Act. The assessments of each member  
27 insurer shall be in the proportion that the net direct written premiums  
28 of such member insurer, on the basis of the insurance in the account  
29 involved, bears to the net direct written premiums of all member insurers  
30 for the same period and in the same account for the calendar year  
31 preceding the date of the assessment ~~the member insurer becomes an~~

1 ~~insolvent insurer. After an initial assessment has been made for an~~  
2 ~~insolvency, any subsequent assessments for that insolvency may be~~  
3 ~~calculated in the same manner as the initial assessment and may use the~~  
4 ~~same calendar year's net direct written premiums as were used in~~  
5 ~~determining the original assessment.~~ The association may make an  
6 assessment for the purpose of meeting administrative costs and other  
7 general expenses not related to a particular impaired insurer, not to  
8 exceed fifty dollars per member insurer ~~company~~ in any one year. Each  
9 member insurer shall be notified of the assessment not later than thirty  
10 days before it is due. Except for such administrative assessment, no  
11 member insurer may be assessed in any year on any account an amount  
12 greater than one percent of that member insurer's net direct written  
13 premiums for the preceding calendar year on the kinds of insurance in the  
14 account. The association may defer, in whole or in part, the assessment  
15 of any member insurer if the assessment would cause the member insurer's  
16 financial statement to reflect amounts of capital or surplus less than  
17 the minimum required for a certificate of authority by any jurisdiction  
18 in which the member insurer is authorized to transact business as an  
19 insurer. Deferred assessments shall be paid when such payment will not  
20 reduce capital or surplus below such required minimum amounts. Such  
21 deferred assessments when paid shall be refunded to those member insurers  
22 ~~companies~~ that received larger assessments by virtue of such deferment  
23 or, in the discretion of any such insurer ~~company~~, credited against  
24 future assessments. No member insurer may pay a dividend to shareholders  
25 or policyholders while such insurer has an unpaid deferred assessment;

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

31 (c) Reimburse any servicing facility for obligations of the

1 association paid by the facility and for expenses incurred by the  
2 facility while handling claims on behalf of the association and such  
3 other expenses of the association as are authorized by the Nebraska  
4 Property and Liability Insurance Guaranty Association Act; ~~and~~

5 (d) Issue to each insurer paying an assessment under this section a  
6 certificate of contribution in appropriate form and terms as prescribed  
7 by the director for the amount so paid. All outstanding certificates  
8 shall be of equal dignity and priority without reference to amounts or  
9 dates of issue. The insurer may offset against its premium and related  
10 retaliatory tax liability to this state pursuant to sections 44-150 and  
11 77-908 accrued with respect to business transacted in such year an amount  
12 equal to twenty percent of the original face amount of the certificate of  
13 contribution, beginning with the first calendar year after the year of  
14 issuance through the fifth calendar year after the year of issuance. If  
15 ~~Should~~ the association recovers ~~recover~~ any sum representing amounts  
16 previously written off by member insurers and offset against premium and  
17 related retaliatory taxes imposed by sections 44-150 and 77-908, such  
18 recovered sum shall be paid by the association to the Director of  
19 Insurance who shall handle such funds in the same manner as provided in  
20 Chapter 77, article 9; -

21 (e) Be deemed the insolvent insurer to the extent of the  
22 association's obligation for covered claims and to such extent shall have  
23 all rights, duties, and obligations of the insolvent insurer, subject to  
24 the limitations provided in the article, as if the insurer had not become  
25 insolvent, with the exception that the liquidator shall retain the sole  
26 right to recover any reinsurance proceeds. The association's rights under  
27 this section include, but are not limited to, the right to pursue and  
28 retain salvage and subrogation recoveries on paid covered claim  
29 obligations to the extent paid by the guaranty fund; and

30 (f) Have access to insolvent insurer records. The liquidator of an  
31 insolvent insurer shall permit access by the association or its



1 authorized representatives, and by any similar organization in another  
2 state or its authorized representatives, to the insolvent insurer's  
3 records which are necessary for the association or such similar  
4 organization in carrying out its functions with regard to covered claims.  
5 In addition, the liquidator shall provide the association or its  
6 representative or such similar organization with copies of such records  
7 upon the request and at the expense of the association or similar  
8 organization.

9 (2) The association may:

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

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

13 (c) Borrow funds necessary to effect the purposes of the Nebraska  
14 Property and Liability Insurance Guaranty Association Act in accord with  
15 the plan of operation;

16 (d) Sue or be sued, and such power to sue shall include the power  
17 and right to intervene as a party before any court that has jurisdiction  
18 over an insolvent insurer as defined by such act;

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

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

23 (g) Bring any action against any third party administrator, agent,  
24 attorney, or other representative of the insolvent insurer to obtain  
25 custody and control of all files, records, and electronic data related to  
26 an insolvent insurer that is appropriate or necessary for the  
27 association, or a similar organization in another state, to carry out  
28 duties under such act ~~Refund to the member insurers in proportion to the~~  
29 ~~contribution of each member insurer to any account that amount by which~~  
30 ~~the assets of the account exceed the liabilities if, at the end of any~~  
31 ~~calendar year, the board of directors finds that the assets of the~~

1 ~~association in the account exceed the liabilities of that account as~~  
2 ~~estimated by the board of directors for the coming year.~~

3 Sec. 4. Section 44-2409, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 44-2409 (1) The director shall:

6 (a) Notify the association of the existence of any insolvent insurer  
7 not later than three days after he or she receives notice of the  
8 determination of the insolvency and order of liquidation pursuant to the  
9 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; and

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

13 (2) The director may:

14 (a) Suspend or revoke, after notice and hearing, the certificate of  
15 authority to transact insurance in this state of any member insurer that  
16 fails to pay an assessment when due, unless such payment was deferred by  
17 the association in the manner provided in the Nebraska Property and  
18 Liability Insurance Guaranty Association Act, or fails to comply with the  
19 plan of operation; and

20 (b) Revoke the designation of any servicing facility if he or she  
21 finds the claims are not being handled in good faith. Designation of a  
22 new servicing facility ~~agency~~ shall be accomplished in the manner set out  
23 in subdivision (1)(b) of section 44-2407.

24 Sec. 5. Section 44-2411, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 44-2411 (1) Any person having a claim against any ~~his or her own~~  
27 insurer under any provisions of any ~~his or her own~~ insurance policy,  
28 which claim is also a covered claim against an insolvent ~~member~~ insurer  
29 under the Nebraska Property and Liability Insurance Guaranty Association  
30 Act, shall be required to exhaust all ~~of his or her~~ rights under such ~~his~~  
31 ~~or her own~~ policy before the association is obligated to pay the covered

1 claim under such act. Any amount payable on a covered claim by the  
2 provisions of such act shall be reduced by the amount of such recovery  
3 under any other ~~the claimant's own~~ insurance policy.

4 (2) Any person having a claim which may be recovered under more than  
5 one insurance guaranty association, or its equivalent, shall seek  
6 recovery first from the association of the place of residence of the  
7 insured, except that if it is a first-party claim for damage to property  
8 with a permanent location, from the association of the location of the  
9 property, and if it is a workers' compensation claim, from the  
10 association of the residence of the claimant. Any recovery pursuant to  
11 the Nebraska Property and Liability Insurance Guaranty Association Act  
12 shall be reduced by the amount of the recovery from any other insurance  
13 guaranty association or its equivalent.

14 Sec. 6. All proceedings arising out of a claim under a policy of  
15 insurance written by an insolvent insurer shall be stayed for one hundred  
16 twenty days from the date of entry of the order of liquidation to permit  
17 proper defense by the association of all such pending causes of action.  
18 Nothing in this section shall be deemed to limit the powers of a receiver  
19 appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation,  
20 and Liquidation Act, or to stay any proceeding brought pursuant to such  
21 act.

22 Sec. 7. Original sections 44-2403, 44-2406, 44-2407, 44-2409, and  
23 44-2411, Reissue Revised Statutes of Nebraska, are repealed.