

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB887

Hearing Date: Tuesday January 24, 2012
Committee On: Banking, Commerce and Insurance
Introducer: Pahls
One Liner: Change provisions relating to insurance

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Christensen, Gloor, McCoy, Pahls, Pirsch, Schilz, Schumacher
Nay:		
Absent:	1	Senator Langemeier
Present Not Voting:		

Proponents:

Senator Rich Pahls
Bruce Ramage
Jan McKenzie

Representing:

Introducer
NE Department of Insurance
NE Insurance Federation

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB887 (Senator Pahls), introduced at the request of the Director of Insurance, would amend various sections with regard to insurance. The bill would provide, section by section, as follows:

FILING FEE REDUCTION

Section 1 would amend section 44-114 to (1) reduce from one hundred dollars to twenty dollars the fee for filings made by domestic assessment associations doing business in more than thirty-one counties and (2) eliminate the five dollar fee for reports filed by unincorporated mutual associations.

INFORMATION SHARING AGREEMENTS

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

INSURANCE HOLDING COMPANY SYSTEM ACT

Section 3 would amend section 44-2120 of the Insurance Holding Company System Act to provide that new sections 12 and 15 of the bill would be included within the act.

Section 4 would amend section 44-2121 of the Insurance Holding Company System Act to define "enterprise risk" as the risk posed to the insurer by non-insurer affiliates that are part of the same holding company system.

Section 5 would amend section 44-2126 of the Insurance Holding Company System Act to require filings and approvals of divestitures of insurers by holding company systems so that a holding company system cannot transfer controlling interest in an insurer by gifting or any other method without notice and review by the director and to require an agreement by acquiring persons that they will continue to provide annual statements under the act. Section 5 would also require an acknowledgment from the acquiring person that the person and all subsidiaries in the insurance holding company system will provide information at the request of the director.

Section 6 would amend section 44-2127 of the Insurance Holding Company System Act to allow hearings on insurer acquisitions to be held on a consolidated basis with participation by several insurance regulators at once.

Section 7 would amend section 44-2129 of the Insurance Holding Company System Act to specify that it is also a violation of the act to attempt to effect a divestiture of a domestic insurer without director approval.

Section 8 would amend section 44-2132 of the Insurance Holding Company System Act to allow the director to require filing of financial statements across the entire holding company system, which requirement would be satisfied with the parent corporation financial statements that have been filed with the Securities and Exchange Commission. Section 8 would require the statement that the board of directors oversees governance and corporate controls be included in the filing, and would grant the director authority to require other information by rules and regulations adopted and promulgated by the director. Section 8 would specify that a disclaimer of affiliation shall be deemed granted by the director within thirty days unless the filing party is notified otherwise, subject to the right to an administrative hearing. Section 8 would also require the ultimate controlling person to file an annual enterprise risk report identifying material risks within the insurance holding system to also be filed with the lead state director of the insurance holding company system.

Section 9 would amend section 44-2133 of the Insurance Holding Company System Act to grant rule and regulation authority to the director to define when cost sharing agreements between insurers and their affiliates are fair and reasonable, and to require filing of amendments or modifications of material affiliate agreements, including the reasons for and financial impact of the change. Such filings would include reinsurance agreements and tax allocation agreements.

Section 10 would amend section 44-2135 of the Insurance Holding Company System Act to specify that the board membership requirements of this section do not apply if the standard is met by the board of the person controlling the insurer. Section 10 would allow the director to waive the requirements of this section if the insurer's direct written premium is less than three hundred million dollars or upon unique factors.

Section 11 would amend section 44-2137 of the Insurance Holding Company System Act to grant the director authority to examine registered insurers and their affiliates to ascertain the financial condition of the insurer, including enterprise risk to the insurer, and would grant the director the authority to order production of information not in possession of the insurer and impose an administrative penalty for failure to comply. Section 10 would also authorize the director to examine insurer affiliates to obtain information and petition the court for an order compelling witnesses or document production.

Section 12 would enact a new section in the Insurance Holding Company System Act to grant the director explicit authority to participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations. Section 12 would grant the director authority regarding operation of the supervisory college, and would require the insurer to pay reasonable expenses associated with the supervisory college. Section 12 would also specify that nothing in the section would delegate the director's authority over the insurer to the supervisory college.

Section 13 would amend section 44-2138 of the Insurance Holding Company System Act to clarify that the provisions of section 44-154 authorizing the director to share information with other regulators applies to information under the act and to grant specific authority to the director to share information obtained under the act with the National Association of Insurance Commissioners.

Section 14 would amend section 44-2139 of the Insurance Holding Company System Act to allow, rather than require, the director to adopt and promulgate rules and regulations under the act.

Section 15 would enact a new section in the Insurance Holding Company System Act to specify that a violation that prevents the full understanding of enterprise risk to the insurer may serve as an independent basis for disapproval of dividends or placement of the insurer under a supervision order under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

NEBRASKA LIFE AND HEALTH GUARANTY ASSOCIATION ACT

Section 16 would amend section 44-2702 of the Nebraska Life and Health Guaranty Association Act to define "authorized" as meaning that an assessment has been passed by resolution of the board of the Nebraska Life and Health Guaranty Association, and would define "called" as meaning the guaranty association board has given notice of an assessment requiring the assessment be paid in the time set forth in the notice. Section 16 would exclude those insurers whose certificate of authority has not been renewed or has been voluntarily withdrawn, and viatical assessment providers, brokers, and financing entities from the definition of "member insurer." (Harvey v. Nebraska Life & Health Ins. Guar. Assn., 277 Neb. 757, 765 N.W.2d 206 (2009) held that a viatical settlement broker was not a "member insurer" and therefore, the Nebraska Life and Health Insurance Guaranty Association was not obligated to guarantee its agreements.) Section 16 would define "owner of a policy" as a person identified as the legal owner, but not to include persons with a beneficial interest in the policy; "receivership court" as the court in the insolvent insurer's state with jurisdiction; "structured settlement annuity;" and specify that a "supplemental contract" is entered between a member insurer and an owner or beneficiary.

Section 17 would amend section 44-2703 of the Nebraska Life and Health Guaranty Association Act to exclude from coverage Medicare Part C and D coverages and viatical settlement contracts. Section 17 would subdivide the coverage levels for health insurance benefits with a coverage limit of \$500,000 for basic hospital, medical, or surgical insurance or major medical insurance, \$300,000 for long term care or disability insurance, and \$100,000 for coverages not specifically defined above. Section 17 would increase coverage for annuity benefits and structured settlement annuities from \$100,000 to \$250,000.

Section 18 would amend section 44-2704 of the Nebraska Life and Health Guaranty Association Act to specify that the act must be construed to effect the purposes listed in section 44-2701.

Section 19 would amend section 44-2719.02 of the Nebraska Life and Health Guaranty Association Act to specify that the provisions of the act in effect on the date the association is obligated for the policies of insurance govern the association's rights or obligations to the policyowners.

HEALTH MAINTENANCE ORGANIZATION ACT

Section 20 would amend section 44-32,177 of the Health Maintenance Organization Act to harmonize internal references to amendments to section 44-2126.

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section 21 would amend section 44-8101 of the Nebraska Protection in Annuity Transactions Act to specify that new sections 28 and 29 of the bill would be included within the act.

Section 22 would amend section 44-8102 of the Nebraska Protection in Annuity Transactions Act to include in the purpose of the act the requirement that insurers establish a system to supervise recommendations.

Section 23 would amend section 44-8103 of the Nebraska Protection in Annuity Transactions Act to include annuity replacements within the scope of the act.

Section 24 would amend section 44-8104 of the Nebraska Protection in Annuity Transactions Act to specify that the act applies to transactions rather than recommendations.

Section 25 would amend section 44-8105 of the Nebraska Protection in Annuity Transactions Act to define "continuing education provider," "replacement," and "suitability information" and also revise the definition of "annuity."

Section 26 would amend section 44-8106 of the Nebraska Protection in Annuity Transactions Act to require an insurance producer, or an insurer where no producer is involved, to have reasonable grounds for believing that a recommendation is suitable for a consumer based on the facts disclosed by the consumer, including the consumer's suitability information, and to require that the producer or insurer must have a reasonable basis to believe that the consumer has been informed and provided information related to the annuity product the consumer is considering purchasing. Section 26 would specify that an insurance producer or insurer has no obligation to a consumer when no recommendation is made or a recommendation was made and it was later found that the recommendation was prepared based on materially inaccurate information. Section 26 would require insurers to establish a supervision system and would allow an insurer to contract the performance of a function required to be performed to a third party if the supervision system includes supervision of contractual performance. Section 26 would provide for a safe harbor for sales made in compliance with Financial Industry Regulatory Authority requirements pertaining to suitability and supervision of annuity transactions.

Section 27 would amend section 44-8107 of the Nebraska Protection in Annuity Transactions Act to specify that an insurer is responsible for compliance with the act and that if a violation occurs by the insurer or its agent, the director may order penalties against the insurer.

Section 28 would enact a new section in the Nebraska Protection in Annuity Transactions Act to require a producer to have adequate product specific training, and to require completion of a one-time minimum four-credit-hour general annuity training course. Section 28 would allow a six-month grace period to comply with the training requirements.

Section 29 would enact a new section in the Nebraska Protection in Annuity Transactions Act to specify that the changes made in the act by this bill shall apply to solicitations occurring on and after January 1, 2013.

CAPTIVE INSURERS ACT

Section 30 would amend section 44-8216 of the Captive Insurers Act to define "guaranty of a parent" as an agreement to pay specified obligations of the special purpose financial captive insurer by a parent of the special purpose financial captive insurer approved by the director that is not a counterparty. Section 30 would allow the director to consider additional factors in determining whether to issue a certificate of authority to a special purpose financial captive insurer including the specific type of life insurance risks, the financial ability of a parent that issues a guaranty, and actuarial opinions. Section 30 would require an annual statement of a senior actuarial officer that the transactions are not used to gain an unfair advantage in pricing of products. Section 30 would allow a special purpose financial captive insurer to use a guaranty of a parent in lieu of a letter of credit.

MISCELLANEOUS PROVISIONS

Section 31 would provide that sections 3 to 15 and 32 of the bill become operative on January 1, 2013, and the other sections become operative three calendar months after adjournment of the legislative session.

Section 32 would provide for repealers of the amendatory sections subject to the January 1, 2013 operative date.

Section 33 would provide for repealers of the amendatory sections not subject to the January 1, 2013 operative date.

Explanation of amendments:

The committee amendments were requested by the Director of Insurance in order to insert a clause that was inadvertently left out of the bill's amendments to the Nebraska Protection in Annuity Transactions Act. The committee amendments would provide for consistency of the bill's provisions with the National Association of Insurance Commissioners model act on this topic.

The committee amendments would amend subsection (3) of section 44-8107 of the Nebraska Protection in Annuity Transactions Act to provide that the Director of Insurance may not reduce or eliminate an administrative penalty imposed against a producer or insurer for violation of the act if the violation was part of a pattern or practice.

Rich Pahls, Chairperson