

E AND R AMENDMENTS TO LB 380

Introduced by Slama, 1, Chairman Enrollment and Review

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 44-2401, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           44-2401 The purpose of the Nebraska Property and Liability Insurance  
6 Guaranty Association Act ~~sections 44-2401 to 44-2418~~ is to provide a  
7 method for the payment of certain claims against insolvent insurance  
8 companies, as defined in the act ~~sections 44-2401 to 44-2418~~, to avoid  
9 unnecessary delay in payment of such claims, to avoid financial loss to  
10 claimants or to policyholders, to assist in the detection and prevention  
11 of insurer insolvencies, and to provide an association of insurers  
12 against which the cost of such protection may be assessed in an equitable  
13 manner.

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

16          44-2403 As used in the Nebraska Property and Liability Insurance  
17 Guaranty Association Act, unless the context otherwise requires:

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

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

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

24           (4)(a) Covered claim shall mean an unpaid claim ~~which has been~~  
25 ~~timely filed with the liquidator~~ as provided for in the Nebraska Insurers  
26 Supervision, Rehabilitation, and Liquidation Act and which arises out of  
27 and is within the coverage of an insurance policy to which the Nebraska

1 Property and Liability Insurance Guaranty Association Act applies issued  
2 by a member insurer that becomes insolvent after May 26, 1971, and (i)  
3 the claimant or insured is a resident of this state at the time of the  
4 insured event or (ii) the property from which the claim arises is  
5 permanently located in this state. Covered claim shall also include the  
6 policyholder's unearned premiums paid by the policyholder on an insurance  
7 policy to which the act applies issued by a member insurer that becomes  
8 insolvent on or after July 9, 1988. Nothing in this section shall be  
9 construed to supersede, abrogate, or limit the common-law ownership of  
10 accounts receivable for earned premium, unearned premium, or unearned  
11 commission;

12 (b) Covered claim shall not include any amount due any reinsurer,  
13 insurer, liquidator, insurance pool, or underwriting association, as  
14 subrogation recoveries or otherwise, a ~~policy deductible~~ or self-insured  
15 portion of the claim, a claim for any premium calculated on a  
16 retrospective basis, any premiums subject to adjustment after the date of  
17 liquidation, or any amount due an attorney or adjuster as fees for  
18 services rendered to the insolvent insurer. Covered claim shall also not  
19 include any amount as punitive or exemplary damages or any amount claimed  
20 for incurred but not reported damages. Covered claim shall also not  
21 include any claim filed with the guaranty fund after the earlier of  
22 twenty-five months after the date of the order of liquidation or the  
23 final date set by the court for the filing of claims against the  
24 liquidator or receiver. This subdivision ~~Subdivision~~ (4)(b) ~~of this~~  
25 ~~section~~ shall not prevent a person from presenting the excluded claim to  
26 the insolvent insurer or its liquidator, but the claim shall not be  
27 asserted against any other person, including the person to whom benefits  
28 were paid or the insured of the insolvent insurer, except to the extent  
29 that the claim is outside the coverage or is in excess of the limits of  
30 the policy issued by the insolvent insurer;

31 (5) Insolvent insurer shall mean a member insurer licensed to

1 transact the business of insurance in this state, either at the time the  
2 policy was issued or when the insured event occurred, and against whom a  
3 final order of liquidation, with a finding of insolvency, has been  
4 entered by a court of competent jurisdiction in the company's state of  
5 domicile after September 2, 1977;

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

13 (7) Net direct written premiums shall mean direct gross premiums  
14 written in this state on insurance policies to which the Nebraska  
15 Property and Liability Insurance Guaranty Association Act applies, less  
16 return premiums thereon and dividends paid or credited to policyholders  
17 on such direct business. Net direct written premiums shall not include  
18 premiums on contracts between insurers or reinsurers;

19 (8) Person shall mean any individual, corporation, partnership,  
20 limited liability company, association, voluntary organization, or  
21 reciprocal insurance exchange; and

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

23 Sec. 3. Section 44-2406, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 44-2406 (1) The association shall be obligated only to the extent of  
26 the covered claims existing prior to the date a member insurer ~~company~~  
27 becomes an insolvent insurer or arising within thirty days after it has  
28 been determined that the insurer is an insolvent insurer, before the  
29 policy expiration date, if less than thirty days after such  
30 determination, or before the insured replaces the policy or on request  
31 effects cancellation, if he or she does so within thirty days of such

1 dates, but such obligation shall include only the ~~that~~ amount of each  
2 covered claim that does not exceed ~~which is in excess of one hundred~~  
3 ~~dollars and is less than~~ three hundred thousand dollars, except that the  
4 association shall pay the amount required by law on any covered claim  
5 arising out of a workers' compensation policy. In no event shall the  
6 association be obligated to a policyholder or claimant in an amount in  
7 excess of the face amount of the policy from which the claim arises. The  
8 association shall be obligated on covered claims, including those under a  
9 workers' compensation policy, for unearned premiums only for the ~~that~~  
10 amount of each covered claim that does not exceed ~~which is in excess of~~  
11 ~~one hundred dollars and is less than~~ ten thousand dollars per policy.

12 (2) The director shall transmit to the association all covered  
13 claims timely filed with him or her pursuant to the Nebraska Insurers  
14 Supervision, Rehabilitation, and Liquidation Act. The association shall  
15 thereupon be considered to have been designated the director's  
16 representative pursuant to the act, and it shall proceed to investigate,  
17 hear, settle, and determine such claims unless the claimant shall, within  
18 thirty days from the date the claim is filed with the director, file with  
19 the director a written demand that the claim be processed in the  
20 liquidation proceedings as a claim not covered by the Nebraska Property  
21 and Liability Insurance Guaranty Association Act. In regard to those  
22 claims transmitted to the association by the director, the association  
23 and claimants shall have all of the rights and obligations and be subject  
24 to the same limitations and procedures as are specified in the Nebraska  
25 Insurers Supervision, Rehabilitation, and Liquidation Act for the  
26 determination of claims.

27 (3) In the case of claims arising from bodily injury, sickness, or  
28 disease, including death resulting therefrom, the amount of any such  
29 award shall not exceed the claimant's reasonable expenses incurred for  
30 necessary medical, surgical, X-ray, and dental services, including  
31 prosthetic devices and necessary ambulance, hospital, professional

1 nursing, and funeral services, and any amounts actually lost by reason of  
2 claimant's inability to work and earn wages or salary or their  
3 equivalent, but not other income, that would otherwise have been earned  
4 in the normal course of such injured claimant's employment. Such award  
5 may also include payments in fact made to others, not members of  
6 claimant's household, which were reasonably incurred to obtain from such  
7 other persons ordinary and necessary services for the production of  
8 income in lieu of those services the claimant would have performed for  
9 himself or herself had he or she not been injured. The amount of any such  
10 award under this subsection shall be reduced by the amount the claimant  
11 is entitled to receive as the beneficiary under any health, accident, or  
12 disability insurance, under any salary or wage continuation program under  
13 which he or she is entitled to benefits, or from his or her employer in  
14 the form of workers' compensation benefits, or any other such benefits to  
15 which the claimant is legally entitled, and any claimant who  
16 intentionally fails to correctly disclose his or her rights to any such  
17 benefits shall forfeit all rights which he or she may have by the  
18 provisions of the Nebraska Property and Liability Insurance Guaranty  
19 Association Act.

20 (4) A third party having a covered claim against any insured of an  
21 insolvent ~~member~~ insurer may file such claim with the director pursuant  
22 to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation  
23 Act, and the association shall process such claim in the manner specified  
24 in subsections (2) and (3) of this section. The filing of such claim  
25 shall constitute an unconditional general release of all liability of  
26 such insured in connection with the claim unless the association  
27 thereafter denies the claim for the reason that the insurance policy  
28 issued by the insolvent insurer ~~member company~~ does not afford coverage  
29 or unless the claimant, within thirty days from the date of filing his or  
30 her claim with the director, files with the director a written demand  
31 that the claim be processed in the liquidation proceedings as a claim not

1 covered by the Nebraska Property and Liability Insurance Guaranty  
2 Association Act.

3 Sec. 4. Section 44-2407, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 44-2407 (1) The association shall:

6 (a) Allocate claims paid and expenses incurred among the three  
7 accounts separately and assess member insurers separately for each  
8 account in the amounts necessary to pay the obligations of the  
9 association under section 44-2406, the expenses of handling covered  
10 claims, the cost of examinations under sections 44-2412 and 44-2413, and  
11 other expenses authorized by the Nebraska Property and Liability  
12 Insurance Guaranty Association Act. The assessments of each member  
13 insurer shall be in the proportion that the net direct written premiums  
14 of such member insurer, on the basis of the insurance in the account  
15 involved, bears to the net direct written premiums of all member insurers  
16 for the same period and in the same account for the calendar year  
17 preceding the date of the assessment ~~the member insurer becomes an~~  
18 ~~insolvent insurer. After an initial assessment has been made for an~~  
19 ~~insolvency, any subsequent assessments for that insolvency may be~~  
20 ~~calculated in the same manner as the initial assessment and may use the~~  
21 ~~same calendar year's net direct written premiums as were used in~~  
22 ~~determining the original assessment.~~ The association may make an  
23 assessment for the purpose of meeting administrative costs and other  
24 general expenses not related to a particular impaired insurer, not to  
25 exceed fifty dollars per member insurer ~~company~~ in any one year. Each  
26 member insurer shall be notified of the assessment not later than thirty  
27 days before it is due. Except for such administrative assessment, no  
28 member insurer may be assessed in any year on any account an amount  
29 greater than one percent of that member insurer's net direct written  
30 premiums for the preceding calendar year on the kinds of insurance in the  
31 account. The association may defer, in whole or in part, the assessment

1 of any member insurer if the assessment would cause the member insurer's  
2 financial statement to reflect amounts of capital or surplus less than  
3 the minimum required for a certificate of authority by any jurisdiction  
4 in which the member insurer is authorized to transact business as an  
5 insurer. Deferred assessments shall be paid when such payment will not  
6 reduce capital or surplus below such required minimum amounts. Such  
7 deferred assessments when paid shall be refunded to those member insurers  
8 ~~companies~~ that received larger assessments by virtue of such deferment  
9 or, in the discretion of any such insurer ~~company~~, credited against  
10 future assessments. No member insurer may pay a dividend to shareholders  
11 or policyholders while such insurer has an unpaid deferred assessment;

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

17 (c) Reimburse any servicing facility for obligations of the  
18 association paid by the facility and for expenses incurred by the  
19 facility while handling claims on behalf of the association and such  
20 other expenses of the association as are authorized by the Nebraska  
21 Property and Liability Insurance Guaranty Association Act; ~~and~~

22 (d) Issue to each insurer paying an assessment under this section a  
23 certificate of contribution in appropriate form and terms as prescribed  
24 by the director for the amount so paid. All outstanding certificates  
25 shall be of equal dignity and priority without reference to amounts or  
26 dates of issue. The insurer may offset against its premium and related  
27 retaliatory tax liability to this state pursuant to sections 44-150 and  
28 77-908 accrued with respect to business transacted in such year an amount  
29 equal to twenty percent of the original face amount of the certificate of  
30 contribution, beginning with the first calendar year after the year of  
31 issuance through the fifth calendar year after the year of issuance. If

1 ~~Should~~ the association recovers ~~recover~~ any sum representing amounts  
2 previously written off by member insurers and offset against premium and  
3 related retaliatory taxes imposed by sections 44-150 and 77-908, such  
4 recovered sum shall be paid by the association to the director ~~Director~~  
5 ~~of Insurance~~ who shall handle such funds in the same manner as provided  
6 in Chapter 77, article 9; -

7 (e) Be deemed the insolvent insurer to the extent of the  
8 association's obligation for covered claims and to such extent shall have  
9 all rights, duties, and obligations of the insolvent insurer, subject to  
10 the limitations provided in the act, as if the insurer had not become  
11 insolvent, with the exception that the liquidator shall retain the sole  
12 right to recover any reinsurance proceeds. The association's rights under  
13 this section include, but are not limited to, the right to pursue and  
14 retain salvage and subrogation recoveries on paid covered claim  
15 obligations to the extent paid by the guaranty fund; and

16 (f) Have access to insolvent insurer records. The liquidator of an  
17 insolvent insurer shall permit access by the association or its  
18 authorized representatives, and by any similar organization in another  
19 state or its authorized representatives, to the insolvent insurer's  
20 records which are necessary for the association or such similar  
21 organization in carrying out its functions with regard to covered claims.  
22 In addition, the liquidator shall provide the association or its  
23 representative or such similar organization with copies of such records  
24 upon the request and at the expense of the association or similar  
25 organization.

26 (2) The association may:

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

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

30 (c) Borrow funds necessary to effect the purposes of the Nebraska  
31 Property and Liability Insurance Guaranty Association Act in accord with



1 the plan of operation;

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

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

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

9 (g) Bring any action against any third-party administrator, agent,  
10 attorney, or other representative of the insolvent insurer to obtain  
11 custody and control of all files, records, and electronic data related to  
12 an insolvent insurer that is appropriate or necessary for the  
13 association, or a similar organization in another state, to carry out  
14 duties under such act ~~Refund to the member insurers in proportion to the~~  
15 ~~contribution of each member insurer to any account that amount by which~~  
16 ~~the assets of the account exceed the liabilities if, at the end of any~~  
17 ~~calendar year, the board of directors finds that the assets of the~~  
18 ~~association in the account exceed the liabilities of that account as~~  
19 ~~estimated by the board of directors for the coming year.~~

20 Sec. 5. Section 44-2409, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 44-2409 (1) The director shall:

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

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

30 (2) The director may:

31 (a) Suspend or revoke, after notice and hearing, the certificate of

1 authority to transact insurance in this state of any member insurer that  
2 fails to pay an assessment when due, unless such payment was deferred by  
3 the association in the manner provided in the Nebraska Property and  
4 Liability Insurance Guaranty Association Act, or fails to comply with the  
5 plan of operation; and

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

10 Sec. 6. Section 44-2410, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 44-2410 (1) Any person recovering under the Nebraska Property and  
13 Liability Insurance Guaranty Association Act ~~provisions of sections~~  
14 ~~44-2401 to 44-2418~~ shall be deemed to have assigned his or her rights  
15 under the policy to the association to the extent of such recovery from  
16 the association. Every insured or claimant seeking recovery under the act  
17 ~~provisions of sections 44-2401 to 44-2418~~ shall be required to cooperate  
18 with the association to the same extent he or she would have been  
19 required to cooperate with the insolvent insurer.

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

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

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

31 Sec. 7. Section 44-2411, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 44-2411 (1) Any person having a claim against any ~~his or her own~~  
3 insurer under any provisions of any ~~his or her own~~ insurance policy,  
4 which claim is also a covered claim against an insolvent ~~member~~ insurer  
5 under the Nebraska Property and Liability Insurance Guaranty Association  
6 Act, shall be required to exhaust all of ~~his or her~~ rights under such ~~his~~  
7 ~~or her own~~ policy before the association is obligated to pay the covered  
8 claim under such act. Any amount payable on a covered claim by the  
9 provisions of such act shall be reduced by the amount of such recovery  
10 under any other ~~the claimant's own~~ insurance policy.

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

21 Sec. 8. Section 44-2415, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 44-2415 There shall be no liability on the part of, and no cause of  
24 action of any nature shall rise against, any member insurer, the  
25 association or its agents or employees, the board of directors of the  
26 association, any servicing facility designated by the association in  
27 accordance with the Nebraska Property and Liability Insurance Guaranty  
28 Association Act ~~provisions of sections 44-2401 to 44-2418~~ or the agents  
29 or employees or officers of such servicing facility, or the director or  
30 his or her representatives for any action taken by them in the  
31 performance of their powers and duties under the act ~~provisions~~ of

1 ~~sections 44-2401 to 44-2418.~~

2       Sec. 9. Section 44-2418, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4       44-2418 Sections 44-2401 to 44-2418 and section 10 of this act shall  
5 be known and may be cited as the Nebraska Property and Liability  
6 Insurance Guaranty Association Act.

7       Sec. 10. All proceedings arising out of a claim under a policy of  
8 insurance written by an insolvent insurer shall be stayed for one hundred  
9 twenty days from the date of entry of the order of liquidation to permit  
10 proper defense by the association of all such pending causes of action.  
11 Nothing in this section shall be deemed to limit the powers of a receiver  
12 appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation,  
13 and Liquidation Act or to stay any proceeding brought pursuant to such  
14 act.

15       Sec. 11. Original sections 44-2401, 44-2403, 44-2406, 44-2407,  
16 44-2409, 44-2410, 44-2411, 44-2415, and 44-2418, Reissue Revised Statutes  
17 of Nebraska, are repealed.

18       2. On page 1, line 2, after "sections" insert "44-2401,"; in line 3  
19 strike "and 44-2411" and insert "44-2410, 44-2411, 44-2415, and 44-2418";  
20 and in line 5 strike "association duties and authorizations" and insert  
21 "powers and duties of the Nebraska Property and Liability Guaranty  
22 Association and the Director of Insurance".