

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 380**

FINAL READING

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 44-2401,  
3 44-2403, 44-2406, 44-2407, 44-2409, 44-2410, 44-2411, 44-2415, and  
4 44-2418, Reissue Revised Statutes of Nebraska; to redefine terms; to  
5 change obligations for covered claims; to change powers and duties  
6 of the Nebraska Property and Liability Guaranty Association and the  
7 Director of Insurance as prescribed; to change provisions relating  
8 to the exhaustion of remedies by claimants; to provide for a stay in  
9 proceedings; to harmonize provisions; and to repeal the original  
10 sections.  
11 Be it enacted by the people of the State of Nebraska,

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

3 44-2401 The purpose of the Nebraska Property and Liability Insurance  
4 Guaranty Association Act ~~sections 44-2401 to 44-2418~~ is to provide a  
5 method for the payment of certain claims against insolvent insurance  
6 companies, as defined in the act ~~sections 44-2401 to 44-2418~~, to avoid  
7 unnecessary delay in payment of such claims, to avoid financial loss to  
8 claimants or to policyholders, to assist in the detection and prevention  
9 of insurer insolvencies, and to provide an association of insurers  
10 against which the cost of such protection may be assessed in an equitable  
11 manner.

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

14 44-2403 As used in the Nebraska Property and Liability Insurance  
15 Guaranty Association Act, unless the context otherwise requires:

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

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

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

22 (4)(a) Covered claim shall mean an unpaid claim ~~which has been~~  
23 ~~timely filed with the liquidator~~ as provided for in the Nebraska Insurers  
24 Supervision, Rehabilitation, and Liquidation Act and which arises out of  
25 and is within the coverage of an insurance policy to which the Nebraska  
26 Property and Liability Insurance Guaranty Association Act applies issued  
27 by a member insurer that becomes insolvent after May 26, 1971, and (i)  
28 the claimant or insured is a resident of this state at the time of the  
29 insured event or (ii) the property from which the claim arises is  
30 permanently located in this state. Covered claim shall also include the  
31 policyholder's unearned premiums paid by the policyholder on an insurance

1 policy to which the act applies issued by a member insurer that becomes  
2 insolvent on or after July 9, 1988. Nothing in this section shall be  
3 construed to supersede, abrogate, or limit the common-law ownership of  
4 accounts receivable for earned premium, unearned premium, or unearned  
5 commission;

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

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

31 (6) Member insurer shall mean any person licensed to write any kind

1 of insurance to which the Nebraska Property and Liability Insurance  
2 Guaranty Association Act applies by the provisions of section 44-2402,  
3 including the exchange of reciprocal or interinsurance contracts, that is  
4 licensed to transact insurance in this state, except assessment  
5 associations operating under Chapter 44, article 8, and also excepting  
6 unincorporated mutuals;

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

13 (8) Person shall mean any individual, corporation, partnership,  
14 limited liability company, association, voluntary organization, or  
15 reciprocal insurance exchange; and

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

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

19 44-2406 (1) The association shall be obligated only to the extent of  
20 the covered claims existing prior to the date a member insurer ~~company~~  
21 becomes an insolvent insurer or arising within thirty days after it has  
22 been determined that the insurer is an insolvent insurer, before the  
23 policy expiration date, if less than thirty days after such  
24 determination, or before the insured replaces the policy or on request  
25 effects cancellation, if he or she does so within thirty days of such  
26 dates, but such obligation shall include only the ~~that~~ amount of each  
27 covered claim that does not exceed ~~which is in excess of one hundred~~  
28 ~~dollars and is less than~~ three hundred thousand dollars, except that the  
29 association shall pay the amount required by law on any covered claim  
30 arising out of a workers' compensation policy. In no event shall the  
31 association be obligated to a policyholder or claimant in an amount in

1 excess of the face amount of the policy from which the claim arises. The  
2 association shall be obligated on covered claims, including those under a  
3 workers' compensation policy, for unearned premiums only for the ~~that~~  
4 amount of each covered claim that does not exceed ~~which is in excess of~~  
5 ~~one hundred dollars and is less than~~ ten thousand dollars per policy.

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

21 (3) In the case of claims arising from bodily injury, sickness, or  
22 disease, including death resulting therefrom, the amount of any such  
23 award shall not exceed the claimant's reasonable expenses incurred for  
24 necessary medical, surgical, X-ray, and dental services, including  
25 prosthetic devices and necessary ambulance, hospital, professional  
26 nursing, and funeral services, and any amounts actually lost by reason of  
27 claimant's inability to work and earn wages or salary or their  
28 equivalent, but not other income, that would otherwise have been earned  
29 in the normal course of such injured claimant's employment. Such award  
30 may also include payments in fact made to others, not members of  
31 claimant's household, which were reasonably incurred to obtain from such

1 other persons ordinary and necessary services for the production of  
2 income in lieu of those services the claimant would have performed for  
3 himself or herself had he or she not been injured. The amount of any such  
4 award under this subsection shall be reduced by the amount the claimant  
5 is entitled to receive as the beneficiary under any health, accident, or  
6 disability insurance, under any salary or wage continuation program under  
7 which he or she is entitled to benefits, or from his or her employer in  
8 the form of workers' compensation benefits, or any other such benefits to  
9 which the claimant is legally entitled, and any claimant who  
10 intentionally fails to correctly disclose his or her rights to any such  
11 benefits shall forfeit all rights which he or she may have by the  
12 provisions of the Nebraska Property and Liability Insurance Guaranty  
13 Association Act.

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

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

30 44-2407 (1) The association shall:

31 (a) Allocate claims paid and expenses incurred among the three

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

1 deferred assessments when paid shall be refunded to those member insurers  
2 ~~companies~~ that received larger assessments by virtue of such deferment  
3 or, in the discretion of any such insurer company, credited against  
4 future assessments. No member insurer may pay a dividend to shareholders  
5 or policyholders while such insurer has an unpaid deferred assessment;

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

11 (c) Reimburse any servicing facility for obligations of the  
12 association paid by the facility and for expenses incurred by the  
13 facility while handling claims on behalf of the association and such  
14 other expenses of the association as are authorized by the Nebraska  
15 Property and Liability Insurance Guaranty Association Act; ~~and~~

16 (d) Issue to each insurer paying an assessment under this section a  
17 certificate of contribution in appropriate form and terms as prescribed  
18 by the director for the amount so paid. All outstanding certificates  
19 shall be of equal dignity and priority without reference to amounts or  
20 dates of issue. The insurer may offset against its premium and related  
21 retaliatory tax liability to this state pursuant to sections 44-150 and  
22 77-908 accrued with respect to business transacted in such year an amount  
23 equal to twenty percent of the original face amount of the certificate of  
24 contribution, beginning with the first calendar year after the year of  
25 issuance through the fifth calendar year after the year of issuance. If  
26 ~~Should~~ the association recovers ~~recover~~ any sum representing amounts  
27 previously written off by member insurers and offset against premium and  
28 related retaliatory taxes imposed by sections 44-150 and 77-908, such  
29 recovered sum shall be paid by the association to the director ~~Director~~  
30 ~~of Insurance~~ who shall handle such funds in the same manner as provided  
31 in Chapter 77, article 9; -



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

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

20       (2) The association may:

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

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

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

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

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

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

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

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

16 44-2409 (1) The director shall:

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

21 (b) Upon request of the board of directors of the association,  
22 provide the association with a statement of the net direct written  
23 premiums of each member insurer.

24 (2) The director may:

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

31 (b) Revoke the designation of any servicing facility if he or she

1 finds the claims are not being handled in good faith. Designation of a  
2 new servicing facility ~~agency~~ shall be accomplished in the manner set out  
3 in subdivision (1)(b) of section 44-2407.

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

6 44-2410 (1) Any person recovering under the Nebraska Property and  
7 Liability Insurance Guaranty Association Act ~~provisions of sections~~  
8 ~~44-2401 to 44-2418~~ shall be deemed to have assigned his or her rights  
9 under the policy to the association to the extent of such recovery from  
10 the association. Every insured or claimant seeking recovery under the act  
11 ~~provisions of sections 44-2401 to 44-2418~~ shall be required to cooperate  
12 with the association to the same extent he or she would have been  
13 required to cooperate with the insolvent insurer.

14 (2) Notice of claims to the liquidator or receiver of the insolvent  
15 member insurer shall be deemed notice to the association or its agent,  
16 and a list of covered claims shall be periodically submitted to the  
17 association or similar organization in another state by the receiver or  
18 liquidator.

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

22 (4) The association shall periodically file with the director  
23 statements of covered claims paid by the association and estimates of  
24 anticipated claims against the association.

25 Sec. 7. Section 44-2411, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

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

1 ~~or her own~~ policy before the association is obligated to pay the covered  
2 claim under such act. Any amount payable on a covered claim by the  
3 provisions of such act shall be reduced by the amount of such recovery  
4 under any other ~~the claimant's own~~ insurance policy.

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

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

17 44-2415 There shall be no liability on the part of, and no cause of  
18 action of any nature shall rise against, any member insurer, the  
19 association or its agents or employees, the board of directors of the  
20 association, any servicing facility designated by the association in  
21 accordance with the Nebraska Property and Liability Insurance Guaranty  
22 Association Act ~~provisions of sections 44-2401 to 44-2418~~ or the agents  
23 or employees or officers of such servicing facility, or the director or  
24 his or her representatives for any action taken by them in the  
25 performance of their powers and duties under the act ~~provisions of~~  
26 ~~sections 44-2401 to 44-2418.~~

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

29 44-2418 Sections 44-2401 to 44-2418 and section 10 of this act shall  
30 be known and may be cited as the Nebraska Property and Liability  
31 Insurance Guaranty Association Act.

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

9           Sec. 11. Original sections 44-2401, 44-2403, 44-2406, 44-2407,  
10 44-2409, 44-2410, 44-2411, 44-2415, and 44-2418, Reissue Revised Statutes  
11 of Nebraska, are repealed.