

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT
LB1073

Hearing Date: Monday January 22, 2024
Committee On: Banking, Commerce and Insurance
Introducer: Slama
One Liner: Change provisions relating to onsite audits of the operations of third-party administrators of insurers

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

Vote Results:

Aye: 8 Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:

Senator Julie Slama
Robert Bell

Representing:

Opening Presenter
Nebraska Insurance Federation

Opponents:

Representing:

Neutral:

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 1073 is a bill that was introduced by Senator Slama. It would amend Neb. Rev. Stat. § 44-5807, a statute that requires at least one review of the operations (within a semi-annual period) of third party administrators be conducted on-site. The bill would provide, section by section, as follows:

Section 1 will remove the requirement that at least one review of the operations (within a semi-annual period) of third party administrators be conducted on-site. While the mandatory on-site requirement is being removed, language is added to 44-5807 that will allow the Director of the Nebraska Department of Insurance the discretion to require an on-site review, should the Director decide that an on-site review is necessary.

Section 2 repeals original section 44-5807.



Explanation of amendments:

The committee amendment (AM 2568) contains the provisions of LB 1073 (Section 6 of AM 2568) and also the provisions of nine other bills that were heard by the Banking, Commerce and Insurance Committee and each made a part of the committee amendment on an 8-0 vote. Those bills are as follows:

LB 885 (Bostar) as amended by AM 2106 - Provide requirements for insurance coverage of lung cancer screening (Section 1 of AM 2568).

LB 885 would create an insurance mandate related to lung cancer screenings. The bill would provide, section by section, as follows:

Section 1 adds a new insurance mandate to our existing insurance statutes. Specifically, it states that certain policies SHALL NOT impose a deductible, coinsurance, or any other cost-sharing requirements for lung cancer screening, including those performed with low-dose computed tomography, for adults at least 50 years of age and not older than 80 years of age.

AM 2106 amends LB 885 as follows:

AM 2106 amends section 1 of LB 885 by providing more clarification on what smoking history an individual must have in order to qualify under the section. Specifically, the individual, who must be at least 50 years of age but no older than 80, must have a twenty-pack-per-year smoking history and must currently smoke or have quit smoking within the past 15 years.

The section also adds language clarifying that the section does not apply if an individual has not smoked for fifteen years, develops a health problem that substantially limits life expectancy, or is preparing to have curative lung surgery

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

John Trapp, Nebraska Medical Association

Megan Schriener, Nebraska Cancer Coalition & Nebraska Oncology Society

June Ryan, AARP Nebraska

Laura Schabloske, Nebraska Cancer Coalition

Don Wesely, Nebraska Nurses Association

Opponents: None

Neutral:

Robert Bell, Nebraska Insurance Federation

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1227 (Ballard) - Change provisions of the Professional Employer Organization Registration Act (Section 7 of AM 2568).

LB 1227 would amend Neb. Rev. Stat. § 48-2706, a statute within the Professional Employer



Organization (PEO) Registration Act (Act).

LB 1227 amends a provision of the PEO Act to allow a PEO to offer its covered employees any health benefit plan that follows the requirements of the Multiple Employer Welfare Arrangement Act and the federal Employee Retirement Income Security Act (ERISA). The purpose of the change is to eliminate unnecessary limits on the available options for PEOs in structuring their health benefit plans and level the playing field for Nebraska-based PEOs.

The bill provides, section by section, as follows:

Section 1 amends Section 48-2706 of the Act. Specifically, a new subsection is added to the end of the section that will allow PEOs to offer their covered employees any health benefit plan that follows the requirements of the Multiple Employer Welfare Arrangement Act and ERISA.

Section 2 repeals the statute amended.

Oral Testimony:

Proponents:

Senator Beau Ballard, Introducer

Amy Knobbe, Pando PEO

Michelle Sitorius, Pando PEO

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1147 (Bostar) as amended by AM 2277 - Provide requirements for separate investment accounts holding assets of index-linked variable annuity contracts (Section 5 of AM 2568).

LB 1147 would create one (1) new statute within our Nebraska insurance statutes to address index-linked variable annuities.

An index-linked variable annuity is a type of variable annuity that is linked to the performance of an index such as the S&P 500 with a built-in floor or buffer related to loss tolerance. LB 1147 updates Nebraska law to define index-linked variable annuities and provides the needed statutory guidance on proper accounting practices for insurance companies to follow, such as the requirements of the separate investment accounts that hold the assets of the annuities. The bill will allow Nebraska domestic life insurance companies to competitively sell index-linked variable annuities to consumers.

Section 1 consists of three (3) subsections that do the following:

Subsection (1) defines the term "index-linked variable annuity" as that term is used in the section. Also states that an index-linked variable annuity may be combined in a single contract with a variable annuity with unitized separate accounts, a fixed annuity, or both.



Subsection (2) states that notwithstanding section 44-2212, a separate investment account established to hold assets of index-linked variable annuity contracts may be uninsulated and chargeable with any liabilities arising out of any other separate investment account or any other business of the company which has no specific and determinable relation to or dependence upon such separate account.

Subsection (3) provides that if a separate investment account established to hold assets of index-linked variable annuity contracts is uninsulated, then certain listed provisions must be applied.

AM 2277 amends LB 1147 as follows:

The language "exempt from the Standard Nonforfeiture Law for Individual Deferred Annuities" in Section 1 subsection (1) is removed.

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

David Lautenschlager, Pacific Life

Robert Bell, Nebraska Insurance Federation

Eric Dunning, Nebraska Department of Insurance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 873 (Ballard) as amended by AM 2272 - Change provisions relating to real estate closing agents (Sections 4, 8, and 9 of AM 2568).

LB 873 would amend two (2) statutes, Neb. Rev. Stat. §§ 76-2,121 and 76-2,122, statutes that relate to closing real estate transactions and the availability of good funds for those transactions.

Section 1 amends Section 76-2,121 by expanding the definition of "good funds" to also include real-time or instant payments through the FedNow® Service of the United States Federal Reserve System (aka Federal Reserve) or through the RTP® network of The Clearing House Payments Company L.L.C.

Section 2 amends Section 76-2,122 by increasing the amount of good funds a person acting as a real estate closing agent must have available for disbursement at the time of closing a real estate transaction from \$500 to \$5,000.

Section 3 repeals the statutes amended.

AM 2272 amends LB 873 as follows:

A new section is added to LB 873 amending 44-19,116 by adding in language stating that a title insurance agent may make disbursements out of an escrow, settlement, or closing account if the



funds received were made in the form of real-time or instant payments through the FedNow® Service of the United States Federal Reserve System or through the RTP® network of The Clearing House Payments Company L.L.C.

Oral Testimony:

Proponents:

Senator Beau Ballard, Introducer
Sam Cooper, Nebraska Land Title Association
Robert Bell, Nebraska Insurance Federation
Ryan McIntosh, Nebraska Bankers Association
Dexter Schrodt, Nebraska Independent Bankers Association

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1148 (Hansen) - Change requirements relating to insurance coverage of step therapy for certain drugs (Section 2 of AM 2568).

LB 1148 is a bill that was introduced by Senator Hansen. It would amend Neb. Rev. Stat. § 44-7,115, a statute found within the Step-Therapy Reform Act (Act). The Act is currently located at Neb. Rev. Stat. §§ 44-7,111 to 44-7,117.

Under the Act, Nebraska requires that health carriers have an override exception to step-therapy protocols. Neb. Rev. Stat. § 44-7,115 is the statute within the Act that addresses the override exception. Specifically, Neb. Rev. Stat. § 44-7,115 does the following: states under what circumstances the exception may be utilized, states what happens after the approval of a step-therapy override exception, creates timelines related to the override exception process, outlines what happens after a denial of an override exception process has occurred, and identifies how the statute shall not be construed.

LB 1148 adds new language to the statute to expand the list of products available for use by health care providers in their step-therapy protocols. Specifically, the statute would be expanded to also include biosimilars along with biosimilars that have the interchangeable designation.

Section-by-Section Summary:

Section 1 amends Neb. Rev. Stat. § 44-7,115 to clarify that the statute can also not be interpreted to prevent a health carrier or utilization review organization from requiring a covered person to try a biosimilar prescription drug prior to providing coverage for the equivalent branded prescription drug. Currently the statute only addresses “a prescription drug with the same generic name and demonstrated bioavailability” and “a biological product that is an interchangeable biological product pursuant to the Nebraska Drug Product Selection Act.” The term “biosimilar” was not included in the statute when originally passed in 2021.

Section 1 also states that the new term “biosimilar” will have the same meaning as defined in 42



U.S.C. 262(i)(2) or interchangeable biological product as defined in 42 U.S.C. 262(i)(3).

Section 2 repeals the original section being amended.

Oral Testimony:

Proponents:

Senator Ben Hanson, Introducer

Kate Kulesher Jarecke, Sandoz

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1135 (Dover) - Prohibit use of right-to-list home sale agreements and change provisions of the Nebraska Real Estate License Act (Section 10, 12, 15, and 17 of AM 2568).

LB 1135 would amend three (3) statutes, Neb. Rev. Stat. §§ 81-885.01 and 81-885.24 (located in the Nebraska Real Estate License Act found at Neb. Rev. Stat. §§ 81-885 to 81-885.56), and 87-302 (located in the Uniform Deceptive Trade Practices Act found at Neb. Rev. Stat. §§ 87-301 to 87-306). The bill would also create one new statute.

The intent of the bill is to address a recent increase in the use of long term “right-to-list home sale agreements” being used in Nebraska real estate transactions. These agreements attach to the deed, and basically state that a named company has the right to list the property in the event it is sold in the future. This agreement would “run with the land”, so that all future owners of the property would be bound by the previously entered into agreement.

It is argued by some that such agreements create a “cloud on title” and thus would negatively affect a homeowners ability to sell the property. See the following article.

Section-by-Section Summary:

Section 1 prevents a person from filing a right-to-list home sale agreement, or a lien or encumbrance resulting from such right-to-list home sale agreement. Also, if any of said agreements, liens, or encumbrances have already been filed, they are made void and unenforceable.

Section 2 amends Section 81-885.01 to add “right-to-list home sale agreement” as a new definition within the Nebraska Real Estate License Act. The definition of “comparative market analysis” is slightly expanded. All definitions in the section are reorganized to be in alphabetical order.

Section 3 amends Section 81-885.24, a statute within the Nebraska Real Estate License Act that grants the Nebraska Real Estate Commission the authority to conduct investigations to see if a person is guilty of certain identified unfair trade practices. Section 3 expands that authority to include the ability to investigate the offering or entering into a right-to-list home sale



agreements, an activity that would be a violation of the Act after the passage of LB1135.

Section 4 amends Section 87-302 by adding "offering or entering into a right-to-list home sale agreement" as a deceptive trade practice under the Uniform Deceptive Trade Practices Act.

Section 5 states that the Revisor of Statutes must assign section 1 to Chapter 76, article 2.

Section 6 repeals the statutes amended.

Oral Testimony:

Proponents:

Senator Robert Dover, Introducer

Greg Lemon, Nebraska Real Estate Commission

Ryan McInstosh, Nebraska Bankers Association

Justin Brady, Nebraska Realtors Association

Suzan DeCamp, AARP Nebraska

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1136 (Dover) - Change provisions of the Nebraska Real Estate License Act (Section 13, 14, and 16 of AM 2568).

LB 1136 would amend three (3) statutes, Neb. Rev. Stat. §§ 81-885.10, 81-885.17 and 81-885.55, that are within the Nebraska Real Estate License Act (Act) currently found at Neb. Rev. Stat. §§ 81-885 to 81-885.56. The Act deals primarily with the licensing of real estate brokers, associate brokers, and real estate salespersons within the state.

Specifically, the bill seeks to increase the amount the State Real Estate Commission (Commission) may fine a violator under the Act and provides clarifying information related to errors and omissions insurance and license renewal fees.

Section-by-Section Summary:

Section 1: Currently under Section 81-885.10 of the Act, the Commission may impose a civil fine on a person performing brokerage activities in the State without a license. That fine limit is currently no more than \$2,500 per filed complaint. Section 1 would increase that fine amount to \$5,000 per filed complaint or the total amount of commission earned by the licensee in each transaction that is subject to the complaint, whichever is greater.

Section 2 amends Section 81-885.17, a statute in the Act that allows the Commission to grant nonresidents a specific nonresident license, and provide the conditions and requirements for doing so. Currently under that statute, a nonresident license will remain in force until (a) it is suspended or revoked by the Commission for just cause or (b) it lapses for failure to pay the annual renewal fee. This section removes the reference to "annual renewal fee" and replaces it with "renewal fee".



Section 3 amends Section 81-885.55, a section that relates to required errors and omissions insurance for licensees under the Act. The section adds language to clarify that references to coverage or policies is a reference to errors and omission coverage or policies. The section also removes the “annual renewal fee” reference and replaces it with “renewal fee”.

The section adds language stating that if a licensee fails to have a certificate proving errors & omission coverage on file with the Commission, the Commission shall place the licensee’s license on inactive status until the Commission receives such certificate. A transfer back to active status would be subject to the fee.

Section 4 repeals the statutes amended.

Oral Testimony:

Proponents:

Senator

Senator Robert Dover, Introducer

Greg Lemon, Nebraska Real Estate Commission

Justin Brady, Nebraska Realtors Association

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1409 (Bostar) as amended by AM 2433 - Change provisions relating to the Nebraska Condominium Act (Section 11 of AM 2568).

LB 1409 would amend Neb. Rev. Stat. § 76-856, a statute located within the Nebraska Condominium Act (Act) (found at Neb. Rev. Stat. §§ 76-825 to 76-894), which addresses the rights of condominium secured lenders and provides restrictions on liens.

Currently under the Act, a condominium declaration may require that, before a specified action is sought to be taken affecting a condominium, a specific number or percentage of the unit owners approve of the action. The problem encountered, however, is that sometimes contacting the required number of unit owners to get their consent is unsuccessful. LB 1409 seeks to provide a legal mechanism by which these unit owners can be provided notice of the specified action sought, and if they are served properly, their failure to respond will be deemed a consent. It also clarifies when such consents are required.

Section-by-Section Summary:

Section 1 amends Section 76-856 of the Act in the following ways:

Subsection (a) is amended to add a clarification stating that the required number or percentage of the mortgagees or beneficiaries is only needed regarding matters involving the subdivision of any unit and the creation of any timeshare or as to proposed amendments to the declaration that



adversely affect the priority of the mortgagee's rights to foreclose its lien.

Subsection (b) is created. It provides a process by which the consent of a mortgagee or beneficiary can be secured. It also clarifies what situations may result in the voidability of an adopted amendment to a declaration if the required consent was not received.

Subsection (c) adds language stating that if any mortgagee or beneficiary of a deed of trust encumbering a unit has been requested by certified mail, return receipt requested, to consent to a proposed amendment to a declaration, and such mortgagee or beneficiary of a deed of trust fails to consent or object to such request in writing delivered to the requestor by certified mail within sixty days after the date such request has been sent to the mortgagee or beneficiary, such failure to respond shall be deemed consent to the amendment.

Subsection (d) adds language stating that any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning five years after the adoption of an amendment to a declaration. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

Section 2 repeals the statutes amended.

AM 2433 amends LB 1409 as follows:

Subsection (a) is expanded to restrict the enforceable of declarations to the following additional matters of: 1) proposed amendments to the declaration that adversely affect the mortgagee's or beneficiary's rights to foreclose its lien by judicial or non-judicial means, or 2) proposed amendments to the declaration that otherwise materially affect the rights and interests of the mortgagee or beneficiary.

Subsection (b) changes "consent from mortgagee or beneficiary of a deed of trust" to "approval from a mortgagee or beneficiary of a deed of trust." Also, "holders of outstanding mortgages" is expanded to read "holders of outstanding mortgages or beneficiaries of deeds of trust."

Subsection (c) changes the use of the term "consent" to "approval." Also, "request has been sent to the mortgagee or beneficiary" is changed to "request has been received by the mortgagee or beneficiary."

Subsection (d) changes the use of the term "consent" to "approval." References to "mortgagee" in the subsection are expanded to read "mortgagee and beneficiary of the deed of trust."

References to "mortgage" in the subsection are expanded to read "mortgage or deed of trust."

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

Tim Hruza, Nebraska State Bar Association

Opponents: None

Neutral: None



Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB 1024 (Bostar) - Change provisions relating to documents and information provided to an independent review organization under the Health Carrier External Review Act (Section 3 of AM 2568).

LB 1024 would amend Neb. Rev. Stat. §44-1308, a statute within the Health Carrier External Review Act ("Act") (currently found at Neb. Rev. Stat. § 44-1301 to 44-1318). The Act was passed in 2013 and was intended to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination by their health carrier.

The bill would provide, section by section, as follows:

Section 1 amends 44-1308. Currently under that statute, a covered person has 4 months after receiving a notice of an adverse determination or final adverse determination to file a request for an external review of the determination by the Director of the Nebraska Department of Insurance.

As part of that external review process, a health carrier must provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination. Section 1 adds language clarifying that documents or information solely related to cost cannot be provided as part of that disclosure.

Section 2 would repeal original section 44-1308.

Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

Cathy Martinez, self

Roxann Holliday, self

Opponents: None

Neutral:

Robert Bell, Nebraska Insurance Federation

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

Julie Slama, Chairperson

