

LEGISLATIVE BILL 366

Approved by the Governor April 27, 1977

Introduced by Murphy, 17

AN ACT to amend sections 44-127.01 to 44-127.03, 44-129, 44-2406, 44-2407, and 44-2410, Reissue Revised Statutes of Nebraska, 1943, and section 44-2403, Revised Statutes Supplement, 1976, relating to insurance; to change procedures relating to liquidation and insolvency as prescribed; to redefine terms; and to repeal the original sections, and also section 44-127.12, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 44-127.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-127.01. [1] Within sixty days after the granting of the order of liquidation, ~~or within sixty days after the revocation of the certificate of authority of an insolvent foreign or alien insurer pursuant to section 44-134;~~ or within such longer time as the court may direct, the liquidator ~~or, in the case of an insolvent foreign or alien company,~~ the Department of Insurance shall cause notice to be published to the company's policyholders, creditors, shareholders, persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720, and all other persons interested in its assets. Such notice shall require claimants to file their claims with the liquidator, ~~or, in the case of an insolvent foreign or alien company,~~ the department, together with proofs thereof within six months after the date of first publication.

(2) Within sixty days after the revocation of the certificate of authority of an insolvent foreign or alien insurance company pursuant to section 44-134, or within such longer time as the director may order, the Department of Insurance shall cause notice to be published to the company's policyholders and persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720. Such notice shall require claimants to file their claims with the Department of Insurance together with proofs thereof within six months after the date of first publication.

Sec. 2. That section 44-127.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-127.02. Such notice as prescribed in section 44-127.01 shall be published in a legal newspaper of general circulation in the county in which the proceeding is pending, not less than once a week for four consecutive weeks. * In addition, for notices of liquidation of domestic companies, verified proof of the publication of such notice shall be filed with the clerk of the court having jurisdiction of the liquidation proceedings.

Sec. 3. That section 44-127.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-127.03. Within thirty days after the date of the first publication of notice, the liquidator shall send notice of liquidation and the time for the filing of claims to the company's all persons who were policyholders, persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720, on the date of the entry of such liquidation order, and to all creditors, shareholders, and all other persons known to have an interest interested in the company's its assets, by ordinary United States mail to the last-known address of such persons, firms or corporations as shown by the records of the company. An affidavit of such mailing shall be filed with the clerk of the court, which affidavit shall contain a statement that the provisions of this section have been complied with. In the case of an insolvent foreign or alien insurer whose certificate of authority has been revoked pursuant to the provisions of section 44-134, the department shall send such notice to the company's policyholders and to persons having claims which are subject to the provisions of sections 44-2401 to 44-2418 and 44-2701 to 44-2720.

Sec. 4. That section 44-129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-129. For the purpose of taking possession of and liquidating a domestic company, the Department of Insurance shall have power, subject to the approval of the court, and in accordance with sections 10 to 15 of this act, to make and prescribe such rules and regulations as the department may deem proper.

Sec. 5. That section 44-2403, Revised Statutes Supplement, 1976, be amended to read as follows:

44-2403. As used in sections 44-2401 to 44-2418, unless the context otherwise requires:

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

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

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

(4) Covered claim shall mean an unpaid claim, excluding one for unearned premiums, which has been timely filed with the liquidator as provided for in section 44-127.01, and which arises out of and is within the coverage of an insurance policy to which sections 44-2401 to 44-2418 apply issued by a member insurer that becomes insolvent after May 26, 1971, and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. Covered claim shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and ~~determined---to---be insolvent and ordered liquidated against whom a final order of liquidation, with a finding of insolvency, has been entered~~ by a court of competent jurisdiction in the company's state of domicile after the effective date of this act;

(6) Member insurer shall mean any person writing licensed to write any kind of insurance to which sections 44-2401 to 44-2418 apply by the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under the provisions of Chapter 44, article 8, and also excepting unincorporated mutuals; ~~and an insurer which was in fact insolvent on May 26, 1971;~~

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which sections 44-2401 to 44-2418 apply, less

return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, association, voluntary organization, or reciprocal insurance exchange; and

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

Sec. 6. That section 44-2406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2406. (1) The association shall be obligated only to the extent of the covered claims existing prior to the determination-of-insolvency date a member company becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, or before the policy expiration date if less than thirty days after the such determination, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the-determination such dates, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than one hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(2) The director shall transmit to the association all covered claims timely filed with him pursuant to the provisions of sections 44-127.01 to 44-127.05. The association shall thereupon be considered to have been designated the director's representative pursuant to section 44-127.07, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by sections 44-2401 to 44-2418. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations, and be subject to the same limitations and procedures, as are specified in sections 44-127.05 to 44-127.11, for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident or disability insurance, or under any salary or wage continuation program under which he is entitled to benefits, or from his employer in the form of workmen's compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his rights to any such benefits shall forfeit all rights to which he may have by the provisions of sections 44-2401 to 44-2418.

(4) A third party having a covered claim against any insured of an insolvent member insurer may file such claim with the director pursuant to the provisions of sections 44-127.01 to 44-127.05, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section; Provided, that the filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim, unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent member company does not afford coverage, or unless the claimant shall, within thirty days from the date of filing his claim with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by sections 44-2401 to 44-2418.

Sec. 7. That section 44-2407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2407. (1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account in the amounts necessary to pay the obligations of the association under the provisions of section 44-2406; the expenses of handling covered claims; the cost of examinations under the provisions of sections 44-2412 and 44-2413; and other expenses authorized by sections 44-2401 to 44-2418. The assessments of each member insurer shall be in proportion that the net direct written premiums of such member insurer, ~~for the preceding calendar year,~~ on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date the member insurer becomes an insolvent insurer. After an initial assessment has been made for an insolvency, any subsequent assessments for that insolvency may be calculated in the same manner as the initial assessment and may use the same calendar year's net direct written premiums as were used in determining the original assessment. The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member company in any one year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No ~~Except for such administrative assessment,~~ no member insurer may be assessed in any year on any account an amount greater than one per cent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member companies that received larger assessments by virtue of such deferment, or in the discretion of any such company, credited against future assessments. No member insurer may pay a dividend to stockholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility; Provided,

that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and such other expenses of the association as are authorized by sections 44-2401 to 44-2418; and

(d) ~~The rates and premiums charged for insurance policies to which sections 44-2401 to 44-2418 apply shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer, together with acquisition costs and taxes applicable to such rates and premiums.~~ Issue to each insurer paying an assessment under this section a certificate of contribution in appropriate form and terms as prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. Such certificate of contribution shall be shown by the insurer in its financial statement as an admitted asset. The insurer shall have the right to show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years not to exceed the following: One hundred per cent for the calendar year of issuance; eighty per cent for the first calendar year after the year of issuance; sixty per cent for the second calendar year after the year of issuance; forty per cent for the third calendar year after the year of issuance; and twenty per cent for the fourth calendar year after the year of issuance. The insurer shall offset not to exceed the amount written off by it in a calendar year under this section against its tax liability imposed by sections 44-1213, 77-908, and 77-909 to the state accrued with respect to business transacted in such year. Should the association recover any sum representing amounts previously written off by member insurers and offset against taxes imposed by sections 44-1213, 77-908, and 77-909, such recovered sum shall be paid by the association to the Director of Insurance who shall handle such funds in the same manner as provided in Chapter 77, article 9.

(2) The association may:

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

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

(c) Borrow funds necessary to effect the purposes of sections 44-2401 to 44-2418 in accord with the plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of sections 44-2401 to 44-2418;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of sections 44-2401 to 44-2418; and

(g) Refund to the member insurers in proportion to the contribution of each member insurer to any account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in the account exceed the liabilities of that account as estimated by the board of directors for the coming year.

Sec. 8. That section 44-2410, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2410. (1) Any person recovering under the provisions of sections 44-2401 to 44-2418 shall be deemed to have assigned his rights under the policy to the association to the extent of such recovery from the association. Every insured or claimant seeking recovery under the provisions of sections 44-2401 to 44-2418 shall be required to cooperate with the association to the same extent he would have been required to cooperate with the insolvent insurer.

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

(3) The receiver, liquidator or statutory successor of an insolvent member insurer shall be bound by settlements of covered claims by the association or a

similar organization in another state.

~~(4) The covered claims paid by the association, and expenses of the association or similar organization in handling claims under the provisions of sections 44-2401 to 44-2418, shall be deemed the expenses of the liquidator and accorded the same priority for payment as the liquidator's expenses.~~

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

Sec. 9. In the event of a liquidation of an insurance company, the priorities of distribution shall be as follows:

(1) Administration expenses of liquidation, administration expenses of conservatorship, expenses of examinations conducted pursuant to sections 44-107 to 44-107.03, expenses incurred by the Nebraska Property and Liability Insurance Guaranty Association and by the Nebraska Life and Health Insurance Guaranty Association, and such expenses incurred by any similar organization in another state;

(2) Claims paid by the Nebraska Property and Liability Insurance Guaranty Association, claims paid by the Nebraska Life and Health Insurance Guaranty Association, and such claims paid by any similar organization in another state;

(3) (a) Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and contracts issued by the company, and (b) liability claims against policyholders which are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the insolvent company; and

(4) All other claims.

Sec. 10. The Director of Insurance shall, within one hundred twenty days of a final determination of insolvency of a member company by a court of competent jurisdiction in this state, make application to the district court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to the Nebraska Property and Liability Insurance Guaranty Association and the Nebraska Life and Health Insurance Guaranty

Association, as the case may be, and to any entity or person performing a similar function in another state.

Sec. 11. Such proposal shall include provisions for:

(1) Reserving amounts for the payment of expenses of administration and claims falling within the priorities established in section 9 of this act;

(2) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(3) Equitable allocation of disbursements to each of the associations entitled thereto;

(4) An agreement from each of the associations entitled to disbursements pursuant to this section to return to the director such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section 9 of this act;

(5) A full report to be made by the association to the director accounting for all assets held, any interest earned, and a complete record of disbursements made by the association; and

(6) Any other information which the court may deem necessary and proper.

Sec. 12. The director's proposal shall provide for disbursements to the associations in amounts estimated to be at least equal to the claim payments made or to be made thereby for which such associations could assert a claim in the liquidation. The proposal shall further provide that if the assets available for disbursement from time to time do not equal the amount of such claim payments made or to be made by the associations then disbursements shall be made pro rata from the available assets.

Sec. 13. The director's proposal shall, with respect to an insolvent insurer writing life, health insurance, or annuities, provide for disbursement of assets to the appropriate association reinsuring, assuming, or guaranteeing policies or contracts of insurance.

Sec. 14. Notice of such application shall be given to the associations in and to the commissioners or directors of insurance of each of the states. Any such

notice shall be deemed to have been given when deposited in the United States first-class mail, postage prepaid, at least thirty days prior to submission of such application to the district court. Action on the application may be taken by the district court if the required notice has been given and if the director's proposal complies with subsections (1) and (2) of section 11 of this act.

Sec. 15. No bond shall be required by any guaranty association.

Sec. 16. That original sections 44-127.01 to 44-127.03, 44-129, 44-2406, 44-2407, and 44-2410, Reissue Revised Statutes of Nebraska, 1943, and section 44-2403, Revised Statutes Supplement, 1976, and also section 44-127.12, Reissue Revised Statutes of Nebraska, 1943, are repealed.