

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 479
Final Reading

Introduced by Lathrop, 12.

Read first time January 22, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend section 44-710.04, Revised
2 Statutes Cumulative Supplement, 2012; to prohibit policy
3 and contract terms relating to contractual rights to
4 proceeds of various insurance as prescribed; to change
5 provisions relating to sickness and accident insurance
6 policies; and to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) No health plan and no self-funded employee
2 benefit plan to the extent not preempted by federal law shall assert
3 any contractual rights to the proceeds of any resources purchased by
4 or on behalf of the policyholder, subscriber, certificate holder, or
5 enrollee, including medical payments coverage under a motor vehicle
6 insurance policy, uninsured or underinsured motorist coverage,
7 accident or disability income coverage, specific disease or illness
8 coverage, or hospital indemnity or other fixed indemnity coverage.

9 (2) This section shall not (a) affect the coordination of
10 benefits between health plans or self-funded employee benefit plans,
11 (b) prevent the coordination of benefits between a health plan or
12 self-funded employee benefit plan and medical payments coverage under
13 a motor vehicle insurance policy if such coordination of benefits
14 applies medical payments coverage to deductible, copayment, and
15 coinsurance amounts after discounts provided through the health plan
16 or self-funded employee benefit plan, or (c) prevent the application
17 of the medical payments coverage under a motor vehicle insurance
18 policy to items not covered by a health plan or self-funded employee
19 benefit plan.

20 (3) For purposes of this section, health plan means an
21 individual or group sickness and accident insurance policy or
22 subscriber contract delivered, issued for delivery, or renewed in
23 this state except for (a) policies that provide coverage for
24 specified disease or other limited-benefit coverage or hospital
25 indemnity or other fixed indemnity coverage or (b) self-funded

1 employee benefit plans to the extent preempted by federal law.

2 Sec. 2. Section 44-710.04, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 44-710.04 Except as provided in sections 44-710.05 and
5 44-787, no policy of sickness and accident insurance delivered or
6 issued for delivery to any person in this state shall contain
7 provisions respecting the matters set forth below unless such
8 provisions are in the words in which the provisions appear in this
9 section, except that the insurer may, at its option, use in lieu of
10 any such provision a corresponding provision of different wording
11 approved by the Director of Insurance which is not less favorable in
12 any respect to the insured or the beneficiary. Any such provision
13 contained in the policy shall be preceded individually by the
14 appropriate caption appearing in this section or, at the option of
15 the insurer, by such appropriate individual or group captions or
16 subcaptions as the Director of Insurance may approve.

17 (1) A provision as follows: CHANGE OF OCCUPATION: If the
18 insured be injured or contract sickness after having changed his or
19 her occupation to one classified by the insurer as more hazardous
20 than that stated in this policy or while doing for compensation
21 anything pertaining to an occupation so classified, the insurer will
22 pay only such portion of the indemnities provided in this policy as
23 the premium paid would have purchased at the rates and within the
24 limits fixed by the insurer for such more hazardous occupation. If
25 the insured changes his or her occupation to one classified by the

1 insurer as less hazardous than that stated in this policy, the
2 insurer, upon receipt of proof of such change of occupation, will
3 reduce the premium rate accordingly and will return the excess pro
4 rata unearned premium from the date of change of occupation or from
5 the policy anniversary date immediately preceding receipt of such
6 proof, whichever is the more recent. In applying this provision, the
7 classification of occupational risk and the premium rates shall be
8 such as have been last filed by the insurer prior to the occurrence
9 of the loss for which the insurer is liable or prior to date of proof
10 of change in occupation with the state official having supervision of
11 insurance in the state where the insured resided at the time this
12 policy was issued; but if such filing was not required, then the
13 classification of occupational risk and the premium rates shall be
14 those last made effective by the insurer in such state prior to the
15 occurrence of the loss or prior to the date of proof of change of
16 occupation.

17 (2) A provision as follows: MISSTATEMENT OF AGE: If the
18 age of the insured has been misstated, all amounts payable under this
19 policy shall be such as the premium paid would have purchased at the
20 correct age.

21 (3) ~~A—Except as provided in subdivision (6) of this~~
22 section, a provision as follows: OTHER INSURANCE IN THIS INSURER: If
23 an accident or sickness or accident and sickness policy or policies
24 previously issued by the insurer to the insured be in force
25 concurrently herewith, making the aggregate indemnity

1 for (insert type of coverage or coverages) in excess
 2 of \$..... (insert maximum limit of indemnity or
 3 indemnities), the excess insurance shall be void and all premiums
 4 paid for such excess shall be returned to the insured or to his or
 5 her estate; or in lieu thereof: Insurance effective at any one time
 6 on the insured under a like policy or policies in this insurer is
 7 limited to the one such policy elected by the insured, his or her
 8 beneficiary, or his or her estate, as the case may be, and the
 9 insurer will return all premiums paid for all other such policies.

10 (4) ~~A~~ Except as provided in subdivision (6) of this
 11 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If
 12 there be other valid coverage, not with this insurer, providing
 13 benefits for the same loss on a provision-of-service basis or on an
 14 expense-incurred basis and of which this insurer has not been given
 15 written notice prior to the occurrence or commencement of loss, the
 16 only liability under any expense-incurred coverage of this policy
 17 shall be for such proportion of the loss as the amount which would
 18 otherwise have been payable hereunder plus the total of the like
 19 amounts under all such other valid coverages for the same loss of
 20 which this insurer had notice bears to the total like amounts under
 21 all valid coverages for such loss and for the return of such portion
 22 of the premiums paid as shall exceed the pro rata portion for the
 23 amount so determined. For the purpose of applying this provision when
 24 other coverage is on a provision-of-service basis, the like amount of
 25 such other coverage shall be taken as the amount which the services

1 rendered would have cost in the absence of such coverage. If the
2 foregoing policy provision is included in a policy which also
3 contains the next following policy provision there shall be added to
4 the caption of the foregoing provision the phrase EXPENSE-
5 INCURRED BENEFITS. The insurer may, at its option, include in this
6 provision a definition of other valid coverage, approved as to form
7 by the Director of Insurance, which definition shall be limited in
8 subject matter to coverage provided by organizations subject to
9 regulation by insurance law or by insurance authorities of this or
10 any other state of the United States or any province of Canada and by
11 hospital or medical service organizations and to any other coverage
12 the inclusion of which may be approved by the Director of Insurance.
13 In the absence of such definition such term shall not include group
14 insurance, automobile medical payments insurance, or coverage
15 provided by hospital or medical service organizations or by union
16 welfare plans or employer or employee benefit organizations. For the
17 purpose of applying the foregoing policy provision with respect to
18 any insured, any amount of benefit provided for such insured pursuant
19 to any compulsory benefit statute, including any workers'
20 compensation or employers liability statute, whether provided by a
21 governmental agency or otherwise shall in all cases be deemed to be
22 other valid coverage of which the insurer has had notice. In applying
23 the foregoing policy provision no third-party liability coverage
24 shall be included as other valid coverage.

25 (5) ~~A—Except as provided in subdivision (6) of this~~

1 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If
2 there be other valid coverage, not with this insurer, providing
3 benefits for the same loss on other than an expense-incurred basis
4 and of which this insurer has not been given written notice prior to
5 the occurrence or commencement of loss, the only liability for such
6 benefits under this policy shall be for such proportion of the
7 indemnities otherwise provided hereunder for such loss as the like
8 indemnities of which the insurer had notice (including the
9 indemnities under this policy) bear to the total amount of all like
10 indemnities for such loss, and for the return of such portion of the
11 premium paid as shall exceed the pro rata portion for the indemnities
12 thus determined. If the foregoing policy provision is included in a
13 policy which also contains the next preceding policy provision, there
14 shall be added to the caption of the foregoing provision the
15 phrase OTHER BENEFITS. The insurer may, at its option, include
16 in this provision a definition of other valid coverage, approved as
17 to form by the Director of Insurance, which definition shall be
18 limited in subject matter to coverage provided by organizations
19 subject to regulation by insurance law or by insurance authorities of
20 this or any other state of the United States or any province of
21 Canada and to any other coverage the inclusion of which may be
22 approved by the Director of Insurance. In the absence of such
23 definition such term shall not include group insurance or benefits
24 provided by union welfare plans or by employer or employee benefit
25 organizations. For the purpose of applying the foregoing policy

1 provision with respect to any insured, any amount of benefit provided
2 for such insured pursuant to any compulsory benefit statute,
3 including any workers' compensation or employers liability statute,
4 whether provided by a governmental agency or otherwise shall in all
5 cases be deemed to be other valid coverage of which the insurer has
6 had notice. In applying the foregoing policy provision no third-party
7 liability coverage shall be included as other valid coverage.

8 (6) In lieu of the provisions set forth in subdivisions
9 (3) through (5) of this section but subject to section 1 of this act,
10 the insurer may at its option include a provision entitled
11 COORDINATION OF BENEFITS which provides for nonduplication and
12 coordination between two or more coverages based on rules and
13 regulations adopted and promulgated by the director.

14 ~~(6)~~(7) A provision as follows: RELATION OF EARNINGS TO
15 INSURANCE: If the total monthly amount of loss-of-time benefits
16 promised for the same loss under all valid loss-of-time coverage upon
17 the insured, whether payable on a weekly or monthly basis, shall
18 exceed the monthly earnings of the insured at the time disability
19 commenced or his or her average monthly earnings for the period of
20 two years immediately preceding a disability for which claim is made,
21 whichever is the greater, the insurer will be liable only for such
22 proportionate amount of such benefits under this policy as the amount
23 of such monthly earnings or such average monthly earnings of the
24 insured bears to the total amount of monthly benefits for the same
25 loss under all such coverage upon the insured at the time such

1 disability commences and for the return of such part of the premiums
2 paid during such two years as shall exceed the pro rata amount of the
3 premiums for the benefits actually paid hereunder; but this shall not
4 operate to reduce the total monthly amount of benefits payable under
5 all such coverage upon the insured below the sum of two hundred
6 dollars or the sum of the monthly benefits specified in such
7 coverages, whichever is the lesser, nor shall it operate to reduce
8 benefits other than those payable for loss of time. The foregoing
9 policy provision may be inserted only in a policy which the insured
10 has the right to continue in force subject to its terms by the timely
11 payment of premiums (a) until at least age fifty or (b) in the case
12 of a policy issued after age forty-four for at least five years from
13 its date of issue. The insurer may, at its option, include in this
14 provision a definition of valid loss-of-time coverage, approved as to
15 form by the Director of Insurance, which definition shall be limited
16 in subject matter to coverage provided by governmental agencies or by
17 organizations subject to regulation by insurance law or by insurance
18 authorities of this or any other state of the United States or any
19 province of Canada or to any other coverage the inclusion of which
20 may be approved by the Director of Insurance or any combination of
21 such coverages. In the absence of such definition such term shall not
22 include any coverage provided for such insured pursuant to any
23 compulsory benefit statute, including any workers' compensation or
24 employers liability statute, or benefits provided by union welfare
25 plans or by employer or employee benefit organizations.

1 ~~(7)~~(8) A provision as follows: UNPAID PREMIUM: Upon the
2 payment of a claim under this policy, any premium then due and unpaid
3 or covered by any note or written order may be deducted therefrom.

4 ~~(8)~~(9) A provision as follows: CANCELLATION: The insurer
5 may cancel this policy at any time by written notice delivered to the
6 insured which shall be effective only if mailed by certified or
7 registered mail to the named insured at his or her last-known
8 address, as shown by the records of the insurer, at least thirty days
9 prior to the effective date of cancellation, except that cancellation
10 due to failure to pay the premium or in cases of fraud or
11 misrepresentation shall not require that such notice be given at
12 least thirty days prior to cancellation. Subject to any provisions in
13 the policy or a grace period, cancellation for failure to pay a
14 premium shall be effective as of midnight of the last day for which
15 the premium has been paid. In cases of fraud or misrepresentation,
16 coverage shall be canceled upon the date of the notice or any later
17 date designated by the insurer. After the policy has been continued
18 beyond its original term the insured may cancel this policy at any
19 time by written notice delivered or mailed to the insurer, effective
20 upon receipt or on such later date as may be specified in such
21 notice. In the event of cancellation, the insurer will return
22 promptly the unearned portion of any premium paid. If the insured
23 cancels, the earned premium shall be computed by the use of the
24 short-rate table last filed with the state official having
25 supervision of insurance in the state where the insured resided when

1 the policy was issued. If the insurer cancels, the earned premium
2 shall be computed pro rata. Cancellation shall be without prejudice
3 to any claim originating prior to the effective date of cancellation.

4 ~~(9)~~(10) A provision as follows: ILLEGAL OCCUPATION: The
5 insurer shall not be liable for any loss to which a contributing
6 cause was the insured's commission of or attempt to commit a felony
7 or to which a contributing cause was the insured's being engaged in
8 an illegal occupation.

9 ~~(10)~~(11) A provision as follows: INTOXICANTS AND
10 NARCOTICS: The insurer shall not be liable for any loss sustained or
11 contracted in consequence of the insured's being intoxicated or under
12 the influence of any narcotic unless administered on the advice of a
13 physician.

14 Sec. 3. Original section 44-710.04, Revised Statutes
15 Cumulative Supplement, 2012, is repealed.