

LEGISLATIVE BILL 930

Approved by the Governor March 21, 2000

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-401, 44-409, 44-1206, 44-2407, 44-2708, 44-2716, and 44-32,134, Reissue Revised Statutes of Nebraska, and section 28-631, Revised Statutes Supplement, 1998; to change provisions relating to insurance fraud, reserves, insurance guaranty associations, and reports; to require coverage for reconstructive surgery as prescribed; to eliminate provisions relating to the Committee on Valuation of Securities; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to outright repeal sections 44-707.01 to 44-707.04, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 28-631, Revised Statutes Supplement, 1998, is amended to read:

28-631. (1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance; or

(j) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g), (i), and (j) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

~~(4)~~ (6) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Sec. 2. Section 44-401, Reissue Revised Statutes of Nebraska, is amended to read:

44-401. In ascertaining the condition of a domestic stock property or casualty insurance company, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. ~~7 but premium notes not past due and unpaid premiums on policies not more than ninety days past due shall be admitted as available resources.~~ In ascertaining its liabilities, there shall be charged in addition to the capital stock, all outstanding claims, and a sum equal to one hundred percent of the unearned premiums on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.01 to 44-416.04, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. In ascertaining the condition of a domestic mutual property or casualty insurance company, other than a company licensed solely to write the line of insurance specified in subdivision (4) of section 44-201, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of examination. ~~7 but premium notes not past due and unpaid premiums on policies not more than ninety days past due shall be admitted as available resources.~~ In ascertaining its liabilities, there shall be charged all outstanding claims and a reserve in an amount equal to one hundred percent of the total unearned premium on all their policies in force. If the department finds this section to be impractical in ascertaining the condition of certain kinds of insurance companies, the department shall adopt and promulgate such rules and regulations as it deems proper, efficient, and consistent with law. Such rules and regulations shall give due regard to the statutes, rules, regulations, and established industry practices which may be used in other states or which are approved by the National Association of Insurance Commissioners.

Sec. 3. Section 44-409, Reissue Revised Statutes of Nebraska, is amended to read:

44-409. In ascertaining the condition of a domestic sickness and accident insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. ~~7 but notes of policyholders not past due, and not for a longer period than four months from the date of the policy for which they are given, and unpaid premiums on policies not more than ninety days past due, may be admitted as available resources.~~ In ascertaining its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premium on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.01 to

44-416.04, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. ~~+ PROVIDED, that such companies shall reserve an amount equal to the total unearned premium on all their policies in force.~~

Sec. 4. (1)(a) A group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for all stages of reconstruction of the breast on which the mastectomy has been performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) A group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract shall provide notice to each policyholder and certificate holder of the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer. Such notice shall be sent to the policyholder or certificate holder by the plan or issuer to the participant or beneficiary not later than January 1, 2001.

(2) A group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract may not deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section, or penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or other incentives to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(3) Nothing in this section shall be construed to prevent a group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

Sec. 5. Section 44-1206, Reissue Revised Statutes of Nebraska, is amended to read:

44-1206. In addition to the requirement that a fund, in cash or invested as provided by law, be on deposit with the attorney as provided in subdivision (7) of section 44-1203, it shall be a further requirement that such beginning deposit be continually maintained with such attorney, and in addition thereto there shall at all times be maintained with such attorney as a reserve, a sum in cash or convertible securities equal to ~~fifty percent of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run, and pro rata on those for longer periods, plus claim and loss reserves as required for the same kind of insurance in other cases, or in lieu thereof, at the option of the attorney,~~ one hundred percent of the aggregate net unearned deposits collected and credited to the accounts of participating subscribers, plus such claim and loss reserves. In computing ~~aggregate net annual deposits and~~ aggregate net unearned deposits, credit will be given for reinsurance in reputable solvent companies. If at any time the assets on deposit with the attorney shall not equal the fund necessary to be maintained as provided above and in addition thereto the reserves as computed herein, the subscribers or their attorney for them shall make up any deficiency. In case of workers' compensation insurance, the Department of Insurance may require of any such attorney a bond or deposit of money with a bank or trust company of this state for the purpose of securing deferred payments or installments for compensation benefits provided for by the Nebraska Workers' Compensation Act.

Sec. 6. Section 44-2407, Reissue Revised Statutes of Nebraska, is amended to read:

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 section

44-2406, the expenses of handling covered claims, the cost of examinations under sections 44-2412 and 44-2413, and other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of such member insurer, 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. Except for such administrative assessment, no member insurer may be assessed in any year on any account an amount greater than one percent 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 shareholders 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, except 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 the Nebraska Property and Liability Insurance Guaranty Association Act; and

(d) 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 percent for the calendar year of issuance; eighty percent for the first calendar year after the year of issuance; sixty percent for the second calendar year after the year of issuance; forty percent for the third calendar year after the year of issuance; and twenty percent 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 premium and related retaliatory tax liability imposed by sections 44-150 and 77-908 to the state accrued with respect to business transacted in such year. The insurer may offset against its premium and related retaliatory tax liability to this state pursuant to sections 44-150 and 77-908 accrued with respect to business transacted in such year an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year after the year of issuance.~~ Should the association recover any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by sections 44-150 and 77-908, 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 the Nebraska Property and Liability Insurance Guaranty Association Act 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 such act;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of such act; 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. 7. Section 44-2708, Reissue Revised Statutes of Nebraska, is amended to read:

44-2708. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses, including expenses for examinations conducted under the authority of subdivision (2) of section 44-2711. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent domestic insurer; and

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent foreign or alien insurer.

(3)(a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(b) Class B and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of the Nebraska Life and Health Insurance Guaranty Association Act. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth pursuant to subsection (4) of this section, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by the Nebraska Life and Health Insurance Guaranty Association Act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including

assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance specified under the Nebraska Life and Health Insurance Guaranty Association Act, to consider the amount reasonably necessary to meet its assessment obligations under such act.

(8) The association shall issue to each insurer paying an assessment under the Nebraska Life and Health Insurance Guaranty Association Act a certificate of contribution in a form 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. A certificate of contribution may be shown by the insurer in its financial statement as a nonadmitted asset in such form and for such amount, if any, and period of time as the director may approve.

Sec. 8. Section 44-2716, Reissue Revised Statutes of Nebraska, is amended to read:

44-2716. (1) Unless a longer period has been allowed by the director, a member insurer shall, at its option, have the right to show a certificate of contribution as a nonadmitted asset in the form approved by the director pursuant to subsection (8) of section 44-2708, at percentages of the original face amount approved by the director, for calendar years not to exceed the following:

- (a) One hundred percent for the calendar year of issuance;
- (b) Eighty percent for the first calendar year after the year of issuance;
- (c) Sixty percent for the second calendar year after the year of issuance;
- (d) Forty percent for the third calendar year after the year of issuance;
- (e) Twenty percent for the fourth calendar year after the year of issuance; and
- (f) Zero percent for the fifth calendar year after the year of issuance and thereafter.

(2) The insurer may offset the amount written off by it in a calendar year under subsection (1) of this section against its premium and related retaliatory tax liability to this state pursuant to sections 44-150 and 77-908 accrued with respect to business transacted in such year an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year of issuance.

(3) (2) Any sums acquired by refund pursuant to subsection (6) of section 44-2708 from the association which have previously been written off by contributing insurers and offset against premium and related retaliatory taxes as provided in subsection (2) (1) of this section and are not then needed for purposes of Chapter 44 shall be paid by the association to the director who shall handle such funds in the same manner as provided for in section 77-912.

Sec. 9. Section 44-32,134, Reissue Revised Statutes of Nebraska, is amended to read:

44-32,134. (1) Every health maintenance organization shall file annually, on or before March 1, a report an annual financial statement with the Director of Insurance, with a copy to the Director of Regulation and Licensure, covering the preceding calendar year. The report annual financial statement shall be on forms prescribed by the Director of Insurance and shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals of the National Association of Insurance Commissioners.

The goodwill, prepaid expenses, leasehold improvements, and furniture and equipment of a health maintenance organization may be shown on the report as admitted assets to an extent not exceeding eighty percent for calendar year 1991, sixty percent for calendar year 1992, forty percent for calendar year 1993, and twenty percent for calendar year 1994. For calendar years commencing with 1995, the goodwill, prepaid expenses, leasehold improvements, and furniture and equipment of a health maintenance organization shall not be shown on the report as admitted assets. For calendar years commencing with 1995, admitted assets shall be shown on the report in accordance with what are known as statutory accounting principles.

(2) Every health maintenance organization shall file annually, on or

before March 1, with the Director of Insurance, with a copy to the Director of Regulation and Licensure:

(a) A list of the providers who have executed a contract that complies with section 44-32,141; and

(b) A description of the grievance procedures, the total number of grievances handled through such procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

(3) Every health maintenance organization shall file annually, on or before June 1, audited financial statements with the Director of Insurance, with a copy to the Director of Regulation and Licensure.

(4) The Director of Insurance may require such additional reports as are deemed necessary and appropriate to carry out his or her duties under the Health Maintenance Organization Act.

Sec. 10. The Revisor of Statutes shall assign section 4 of this act to Chapter 44, article 7.

Sec. 11. Original sections 44-401, 44-409, 44-1206, 44-2407, 44-2708, 44-2716, and 44-32,134, Reissue Revised Statutes of Nebraska, and section 28-631, Revised Statutes Supplement, 1998, are repealed.

Sec. 12. The following sections are outright repealed: Sections 44-707.01 to 44-707.04, Reissue Revised Statutes of Nebraska.