

NEBRASKA

**PROPERTY AND LIABILITY
INSURANCE GUARANTY ASSOCIATION ACT**

Section.

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44-2401. Purpose of sections. The purpose of sections 44-2401 to 44-2418 is to provide a method for the payment of certain claims against insolvent insurance companies, as defined in sections 44-2401 to 44-2418, to avoid unnecessary delay in payment of such claims, to avoid financial loss to claimants or to policyholders, to assist in the detection and prevention of insurer insolvencies, and to provide an association of insurers against which the cost of such protection may be assessed in an equitable manner.

Source:Laws 1971, LB 722, § 1.

44-2402. Kinds of insurance covered.The Nebraska Property and Liability Insurance Guaranty Association Act shall apply to all kinds of direct insurance except ocean marine, motor vehicle service contract reimbursement, and those lines of insurance specified in subdivisions (1) through (4), (13) through (17), (19), and (20) of section 44-201.

Source:Laws 1971, LB 722 § 2; Laws 1989, LB 92, § 198; Laws 1990, LB 1136, § 99. Operative date July 10, 1990.

44-2403. Terms, defined. As used in the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires.

- (1) Account shall mean any one of the three accounts created by section 44-2404;
- (2) Director shall mean the Director of Insurance or his or her duly authorized representative;
- (3) Association shall mean the Nebraska Property and Liability Insurance Guaranty

Association created by section 44-2404;

(4)(a) Covered claim shall mean an unpaid claim which has been timely filed with the liquidator as provided for in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and which arises out of and is within the coverage of an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission.

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a policy deductible or self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. Subdivision (4)(b) of this section shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(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 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 September 2, 1977;

(6) Member insurer shall mean any person licensed to write any kind of insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies 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 Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which the Nebraska Property and Liability Insurance Guaranty Association Act applies, 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, limited liability company, association, voluntary organization, or reciprocal insurance exchange; and

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

Source:Laws 1971, LB 722, § 3; Laws 1974, LB 1014, § 1; Laws 1977, LB 366, § 5; Laws 1988, LB 700, § 1; Laws 1989, LB 319, § 71.
Operative date May 26, 1989; Laws 1993, LB 121, § 239.

44-2404. Nebraska Property and Liability Insurance Guaranty Association; legal entity; members; functions. There is hereby created a nonprofit unincorporated legal entity to be known as the Nebraska Property and Liability Insurance Guaranty Association. All insurers defined as member insurers in subdivision (6) of section 44-2403 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 44-2408 and shall exercise its powers through a board of directors established by section 44-2405. For purposes of administration and assessment, the association shall be divided into three separate accounts: (a) The workers' compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies.

Source:Laws 1971, LB 722, § 4; Laws 1974, LB 1014, § 2; Laws 1986, LB 811, § 22.

44-2405. Association; board of directors; members; number; selection; qualifications; expenses. (1) The board of directors of the association shall consist of seven persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. At least four members of the board shall represent domestic insurers. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after May 26, 1971, the director may appoint the initial members of the board of directors.

(2) Subject to the limitations in subsection (1) of this section, the director shall, in approving selections to the board, consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors as provided in sections 81-1174 to 81-1177 for state employees.

Source:Laws 1971, LB 722, § 5; Laws 1981, LB 204, § 71.

44-2406. Claims; filing; determination. (1) The association shall be obligated only to the extent of the covered claims existing prior to the 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, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of 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 three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a worker'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. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for that amount of each covered claim which is in excess of one hundred dollars and is less than ten thousand dollars per policy.

(2) The director shall transmit to the association all covered claims timely filed with him or

her pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall thereupon be considered to have been designated the director's representative pursuant to the act, 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 the Nebraska Property and Liability Insurance Guaranty Association Act. 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 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act 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 or herself had he or she 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, under any salary or wage continuation program under which he or she is entitled to benefits, or from his or her employer in the form of workers' compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his or her rights to any such benefits shall forfeit all rights which he or she may have by the provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(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 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. 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, within thirty days from the date of filing his or her claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

Source:Laws 1971, LB 722, § 6; Laws 1977, LB 366, § 6; Laws 1981, LB 275, § 1; Laws 1986, LB 811, § 23; Laws 1988, LB 352, § 64; Laws 1988, LB 700, § 2; Laws 1989, LB 319, § 72. Operative date May 26, 1989.

44-2407. Association; duties; powers; enumerated. (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. 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 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.

Source:Laws 1971, LB 722, § 7; Laws 1977, LB 366, § 7; Laws 1986, LB 1114, § 5; Laws 1987, LB 302, § 5; Laws 1989, LB 92, § 199. Effective date August 25, 1989; Laws 2000, LB 930, § 6.

44-2408. Association; plan of operation; amendments; submit to director. (1)(a) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the affairs of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the director.

(b) If the association fails to submit suitable amendments to the plan, the director shall, after allowing the association the opportunity to present its views, adopt and promulgate reasonable rules and regulations as are necessary and advisable to effectuate the Nebraska Property and Liability Insurance Guaranty Association Act. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under the act will be performed;

(b) Establish procedures for handling the assets of the association;

(c) Establish the amount and method of reimbursing members of the board of directors under section 44-2405;

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) Establish regular places and times for meetings of the board of directors;

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the director within sixty days after the action or decision;

(h) Establish the procedures whereby selection of the board of directors will be submitted to the director for approval; and

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association are delegated to a corporation, association, or other organization which performs, or will perform, functions similar to those of the association, or its equivalent, in two or more states. Such corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the director and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by the act.

Source:Laws 1971, LB 722, § 8; Laws 1989, LB 92, § 200. Effective date August 25, 1989.

44-2409. Director; duties. (1) The director shall:

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

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

(2) The director may:

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

(b) Revoke the designation of any servicing facility if he or she finds the claims are not being handled in good faith. Designation of a new servicing agency shall be accomplished in the manner set out in subdivision (1)(b) of section 44-2407.

Source:Laws 1971, LB 722, § 9; Laws 1989, LB 319, § 73. Operative date May 26, 1989.

44-2410. Assignment of rights; notice of claims; settlement; effect; statement of claims; file with director. (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 association shall periodically file with the director statements of covered claims paid by the association and estimates of anticipated claims against the association.

Source:Laws 1971, LB 722, § 10; Laws 1977, LB 366, § 8.

44-2411. Exhaustion of remedies. (1) Any person having a claim against his or her own insurer under any provisions of his or her own insurance policy, which claim is also a covered claim against an insolvent member insurer under the Nebraska Property and Liability Insurance Guaranty Association Act, shall be required to exhaust all of his or her rights under his or her own policy before the association is obligated to pay the covered claim under such act. Any amount payable on a covered claim by the provisions of such act shall be reduced by the amount of such recovery under the claimant's own insurance policy.

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

Source:Laws 1971, LB 722, § 11; Laws 1986, LB 811, § 24.

44-2412. Board of directors; director; duties. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the director of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public;

(2) The board of directors may, upon majority vote, request that the director order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the director shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such qualified persons as the director designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. The director shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the director but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the director to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined may be insolvent or in a financial condition hazardous to the policyholders or the public. Such report to the board of directors shall not be considered a release to the public under applicable insurer examination statutes;

(4) The board of directors may, upon majority vote, make reports and recommendations to the director upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents;

(5) The board of directors may, upon majority vote, make recommendations to the director for the detection and prevention of insurer insolvencies; and

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the director.

Source:Laws 1971, LB 722, § 12.

44-2413. Association; director; examine; regulate; financial report; furnish. The association shall be subject to examination and regulation by the director. Any such examination conducted pursuant to the provisions of this section shall be paid for by the association. The board of directors shall submit to the director, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the director.

Source:Laws 1971, LB 722, § 13.

44-2414. Association; fees and taxes; exempt. The association shall be exempt from the payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Source:Laws 1971, LB 722, § 14.

44-2415. Exemption from liability. There shall be no liability on the part of, and no cause of action of any nature shall rise against, any member insurer, the association or its agents or employees, the board of directors of the association, any servicing facility designated by the association in accordance with the provisions of sections 44-2401 to 44-2418 or the agents or employees or officers of such servicing facility, or the director or his representatives for any action taken by them in the performance of their powers and duties under the provisions of sections 44-2401 to 44-2418.

Source:Laws 1971, LB 722, § 15.

44-2416. Advertisements by member insurers of coverage by association; prohibited. Advertisements by member insurers which include a reference to the coverage of the insurance guaranty association are specifically prohibited.

Source:Laws 1971, LB 722, § 16.

44-2417. Assessments made by insurance guaranty associations of other states; not considered taxes, fees, licenses, obligations, prohibitions, or restrictions. Assessments made by the insurance guaranty associations or similar entities, pursuant to the laws of any other state shall not be considered taxes, licenses, other fees, other material obligations, prohibitions, or restrictions as those terms are defined in section 44-150.

Source:Laws 1971, LB 722, § 17.

44-2418. Act, how cited. Sections 44-2401 to 44-2418 shall be known and may be cited as the Nebraska Property and Liability Insurance Guaranty Association Act.

Source:Laws 1971, LB 722, § 18; Laws 1974, LB 1014, § 3.