

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 280

Introduced by Lathrop, 12.

Read first time January 11, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend section 44-1525, Reissue
2 Revised Statutes of Nebraska; to adopt the Discretionary
3 Clause Prohibition Act; to create an unfair trade
4 practice in the business of insurance; to harmonize
5 provisions; to provide severability; and to repeal the
6 original section.

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

1 Section 1. Sections 1 to 5 of this act shall be known and
2 may be cited as the Discretionary Clause Prohibition Act.

3 Sec. 2. The purpose of the Discretionary Clause
4 Prohibition Act is to assure that health insurance benefits and
5 disability income protection coverage are contractually guaranteed
6 and to avoid the conflict of interest that occurs when the health
7 carrier or insurer responsible for providing benefits has
8 discretionary authority to decide what benefits are due. Nothing in
9 the act shall be construed as imposing any requirement or duty on any
10 person other than a health carrier or insurer that offers disability
11 income protection coverage.

12 Sec. 3. For purposes of the Discretionary Clause
13 Prohibition Act:

14 (1) Director means the Director of Insurance;

15 (2) Disability income protection coverage means a policy,
16 contract, certificate, or agreement that provides for periodic
17 payments, weekly or monthly, for a specified period during the
18 continuance of disability resulting from either sickness or injury or
19 a combination of sickness and injury;

20 (3) Health care services means services for the
21 diagnosis, prevention, treatment, cure, or relief of a health
22 condition, illness, injury, or disease;

23 (4) Health carrier means an entity subject to the
24 insurance laws and rules and regulations of this state, or subject to
25 the jurisdiction of the director, that contracts or offers to

1 contract to provide, deliver, arrange for, pay for, or reimburse any
2 of the costs of health care services, including a sickness and
3 accident insurance company, a health maintenance organization, a
4 nonprofit hospital and health service cooperation, or any other
5 entity providing a plan of health insurance, health benefits, or
6 health services; and

7 (5) Person means an individual, a corporation, a
8 partnership, an association, a joint venture, a joint stock company,
9 a trust, an unincorporated organization or any similar entity or a
10 combination of any such entities.

11 Sec. 4. (1) No policy, contract, certificate, or
12 agreement offered or issued in this state by a health carrier to
13 provide, deliver, arrange for, pay for, or reimburse any of the costs
14 of health care services shall contain a provision purporting to
15 reserve discretion to the health carrier to interpret the terms of
16 the contract or to determine eligibility to receive benefits.

17 (2) No policy, contract, certificate, or agreement
18 offered or issued in this state providing for disability income
19 protection coverage shall contain a provision purporting to reserve
20 discretion to the insurer to interpret the terms of the contract or
21 to determine eligibility to receive benefits.

22 Sec. 5. A violation of the Discretionary Clause
23 Prohibition Act shall be an unfair trade practice in the business of
24 insurance subject to the Unfair Insurance Trade Practices Act.

25 Sec. 6. Section 44-1525, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-1525 Any of the following acts or practices, if
3 committed in violation of section 44-1524, shall be unfair trade
4 practices in the business of insurance:

5 (1) Making, issuing, circulating, or causing to be made,
6 issued, or circulated any estimate, illustration, circular,
7 statement, sales presentation, omission, or comparison which:

8 (a) Misrepresents the benefits, advantages, conditions,
9 or terms of any policy;

10 (b) Misrepresents the dividends or share of the surplus
11 to be received on any policy;

12 (c) Makes any false or misleading statements as to the
13 dividends or share of surplus previously paid on any policy;

14 (d) Misleads as to or misrepresents the financial
15 condition of any insurer or the legal reserve system upon which any
16 life insurer operates;

17 (e) Uses any name or title of any policy or class of
18 policies which misrepresents the true nature thereof;

19 (f) Misrepresents for the purpose of inducing or tending
20 to induce the purchase, lapse, forfeiture, exchange, conversion, or
21 surrender of any policy, including intentionally misquoting any
22 premium rate;

23 (g) Misrepresents for the purpose of effecting a pledge
24 or assignment of or effecting a loan against any policy; or

25 (h) Misrepresents any policy as being shares of stock;

1 (2) Making, publishing, disseminating, circulating, or
2 placing before the public, or causing, directly or indirectly, to be
3 made, published, disseminated, circulated, or placed before the
4 public, in a newspaper, magazine, or other publication, or in the
5 form of a notice, circular, pamphlet, letter, or poster, or over any
6 radio or television station, or in any other way, an advertisement,
7 announcement, or statement containing any assertion, representation,
8 or statement with respect to the business of insurance or with
9 respect to any insurer in the conduct of his or her insurance
10 business which is untrue, deceptive, or misleading;

11 (3) Making, publishing, disseminating, or circulating,
12 directly or indirectly, or aiding, abetting, or encouraging the
13 making, publishing, disseminating, or circulating of any oral or
14 written statement or any pamphlet, circular, article, or literature
15 which is false or maliciously critical of or derogatory to the
16 financial condition of any insurer and which is calculated to injure
17 such insurer;

18 (4) Entering into any agreement to commit or by any
19 concerted action committing any act of boycott, coercion, or
20 intimidation resulting in or tending to result in unreasonable
21 restraint of or monopoly in the business of insurance;

22 (5)(a) Knowingly filing with any supervisory or other
23 public official, or knowingly making, publishing, disseminating,
24 circulating, or delivering to any person, or placing before the
25 public, or knowingly causing, directly or indirectly, to be made,

1 published, disseminated, circulated, delivered to any person, or
2 placed before the public, any false material statement of fact as to
3 the financial condition of an insurer; or

4 (b) Knowingly making any false entry of a material fact
5 in any book, report, or statement of any insurer or knowingly
6 omitting to make a true entry of any material fact pertaining to the
7 business of such insurer in any book, report, or statement of such
8 insurer;

9 (6) Issuing or delivering or permitting agents, officers,
10 or employees to issue or deliver agency company stock or other
11 capital stock, or benefit certificates or shares in any common-law
12 corporation, or securities or any special or advisory board contracts
13 or other contracts of any kind promising returns and profits as an
14 inducement to insurance;

15 (7)(a) Making or permitting any unfair discrimination
16 between individuals of the same class and equal expectation of life
17 in the rates charged for any life insurance policy or annuity or in
18 the dividends or other benefits payable thereon or in any other of
19 the terms and conditions of such policy or annuity;

20 (b) Making or permitting any unfair discrimination
21 between individuals of the same class involving essentially the same
22 hazards in the amount of premium, policy fees, or rates charged for
23 any sickness and accident insurance policy or in the benefits payable
24 thereunder, in any of the terms or conditions of such policy, or in
25 any other manner, except that this subdivision shall not limit the

1 negotiation of preferred provider policies and contracts under
2 sections 44-4101 to 44-4113;

3 (c) Making or permitting any unfair discrimination
4 between individuals or risks of the same class and of essentially the
5 same hazards by refusing to issue, refusing to renew, canceling, or
6 limiting the amount of insurance coverage on a property or casualty
7 risk because of the geographic location of the risk unless:

8 (i) The refusal, cancellation, or limitation is for a
9 business purpose which is not a pretext for unfair discrimination; or

10 (ii) The refusal, cancellation, or limitation is required
11 by law, rule, or regulation;

12 (d) Making or permitting any unfair discrimination
13 between individuals or risks of the same class and of essentially the
14 same hazards by refusing to issue, refusing to renew, canceling, or
15 limiting the amount of insurance coverage on a residential property
16 risk, or the personal property contained therein, because of the age
17 of the residential property unless:

18 (i) The refusal, cancellation, or limitation is for a
19 business purpose which is not a pretext for unfair discrimination; or

20 (ii) The refusal, cancellation, or limitation is required
21 by law, rule, or regulation;

22 (e) Refusing to insure, refusing to continue to insure,
23 or limiting the amount of coverage available to an individual solely
24 because of the sex or marital status of the individual. This
25 subdivision shall not prohibit an insurer from taking marital status

1 into account for the purpose of defining individuals eligible for
2 dependent benefits; or

3 (f) Terminating or modifying coverage or refusing to
4 issue or refusing to renew any property or casualty insurance policy
5 solely because the applicant or insured or any employee of the
6 applicant or insured is mentally or physically impaired unless:

7 (i) The termination, modification, or refusal is for a
8 business purpose which is not a pretext for unfair discrimination; or

9 (ii) The termination, modification, or refusal is
10 required by law, rule, or regulation.

11 This subdivision (f) shall not apply to any sickness and
12 accident insurance policy sold by a casualty insurer and shall not be
13 interpreted to modify any other provision of law relating to the
14 termination, modification, issuance, or renewal of any policy;

15 (8)(a) Except as otherwise expressly provided by law:

16 (i) Knowingly permitting or offering to make or making
17 any life insurance policy, annuity, or sickness and accident
18 insurance policy, or agreement as to any such policy or annuity,
19 other than as plainly expressed in the policy or annuity issued
20 thereon, or paying, allowing, or giving, or offering to pay, allow,
21 or give, directly or indirectly, as inducement to such policy or
22 annuity, any rebate of premiums payable on the policy or annuity, or
23 any special favor or advantage in the dividends or other benefits
24 thereon, or any valuable consideration or inducement whatever not
25 specified in the policy or annuity; or

1 (ii) Giving, selling, purchasing, or offering to give,
2 sell, or purchase as inducement to such policy or annuity or in
3 connection therewith any stocks, bonds, or other securities of any
4 insurer or other corporation, association, partnership, or limited
5 liability company, or any dividends or profits accrued thereon, or
6 anything of value not specified in the policy or annuity.

7 (b) Nothing in subdivision (7) or (8)(a) of this section
8 shall be construed as including within the definition of
9 discrimination or rebates any of the following acts or practices:

10 (i) In the case of any life insurance policy or annuity,
11 paying bonuses to policyholders or otherwise abating their premiums
12 in whole or in part out of surplus accumulated from nonparticipating
13 insurance if such bonuses or abatement of premiums are fair and
14 equitable to policyholders and for the best interests of the insurer
15 and its policyholders;

16 (ii) In the case of life insurance policies issued on the
17 industrial debit plan, making allowance to policyholders who have
18 continuously for a specified period made premium payments directly to
19 an office of the insurer in an amount which fairly represents the
20 saving in collection expenses; or

21 (iii) Readjustment of the rate of premium for a group
22 insurance policy based on the loss or expense thereunder, at the end
23 of the first or any subsequent policy year of insurance thereunder,
24 which may be made retroactive only for such policy year;

25 (9) Failing of any insurer to maintain a complete record

1 of all the complaints received since the date of its last examination
2 conducted pursuant to the Insurers Examination Act. This record shall
3 indicate the total number of complaints, their classification by line
4 of insurance, the nature of each complaint, the disposition of each
5 complaint, and the time it took to process each complaint. For
6 purposes of this subdivision, complaint shall mean any written
7 communication primarily expressing a grievance;

8 (10) Making false or fraudulent statements or
9 representations on or relative to an application for a policy for the
10 purpose of obtaining a fee, commission, money, or other benefit from
11 any insurer, agent, broker, or individual person;

12 (11) Failing of any insurer, upon receipt of a written
13 inquiry from the department, to respond to such inquiry or request
14 additional reasonable time to respond within fifteen working days;

15 (12) Accepting applications for or writing any policy of
16 insurance sold, negotiated, or solicited by an insurance producer or
17 business entity not licensed or appointed as required by the
18 Insurance Producers Licensing Act; and

19 (13) Violating any provision of section 44-320, 44-348,
20 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523,
21 44-7,101, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or
22 44-5266, the Discretionary Clause Prohibition Act, the Privacy of
23 Insurance Consumer Information Act, or the Unfair Discrimination
24 Against Subjects of Abuse in Insurance Act.

25 Sec. 7. If any section in this act or any part of any

1 section is declared invalid or unconstitutional, the declaration
2 shall not affect the validity or constitutionality of the remaining
3 portions.

4 Sec. 8. Original section 44-1525, Reissue Revised
5 Statutes of Nebraska, is repealed.