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SENATE FILE 460
BY COMMITTEE ON COMMERCE
(formerly SSB 106)
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Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating an Iowa life and health insurance guaranty
2 association, protecting persons, within limits, against the
3 failure of certain life, health, and annuity contracts because
4 of impairment or insolvency, specifying the powers and duties
5 of the association, and providing administrative procedures
6 and methods for the operation and financing of the
7 association, including but not limited to the assessment of
8 member insurers and the provision of a partial premium tax
9 liability credit.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 460

1 Section 1. NEW SECTION. 508C.1 TITLE.

2 This chapter shall be cited as the "Iowa Life and Health
3 Insurance Guaranty Association Act".

4 Sec. 2. NEW SECTION. 508C.2 PURPOSE.

5 1. The purpose of this chapter is to protect, subject to
6 certain limitations, the persons specified in section 508C.3,
7 subsection 1, against failure in the performance of
8 contractual obligations under life and health insurance
9 policies and annuity contracts specified in section 508C.3,
10 subsection 2, because of the impairment or insolvency of the
11 member insurer which issued the policies or contracts.

12 2. To provide this protection, an association of insurers
13 is created to enable the guaranty of payments of benefits and
14 of continuation of coverages as limited in this chapter.
15 Members of the association are subject to assessment to
16 provide funds to carry out the purpose of this chapter.

17 Sec. 3. NEW SECTION. 508C.3 SCOPE.

18 1. This chapter shall provide coverage under the policies
19 and contracts specified in subsection 2 to all of the
20 following:

21 a. Except for nonresident certificate holders under group
22 policies or contracts, persons who are the beneficiaries,
23 assignees, or payees of the persons covered under paragraph
24 "b".

25 b. Persons who are owners of the policies or contracts
26 specified in subsection 2, or are insureds or annuitants under
27 the policies or contracts, and who are either of the
28 following:

29 (1) Residents of this state.

30 (2) Nonresidents of this state if all of the following
31 conditions are met:

32 (a) The state in which the person resides has an
33 association similar to the association created in this
34 chapter.

35 (b) The person is not eligible for coverage by an

1 association described in subparagraph part (a).

2 (c) The insurer which issued the policy or contract never
3 held a license or certificate of authority in the state in
4 which the person resides.

5 (d) The insurer is domiciled in this state.

6 2. This chapter shall provide coverage to the persons
7 specified in subsection 1 under direct life insurance
8 policies, health insurance policies, annuity contracts,
9 supplemental contracts, and certificates under group policies
10 or contracts issued by member insurers.

11 3. This chapter does not apply to:

12 a. Any portion of a life, health, or annuity benefit
13 payment liability arising on or after the date of insolvency
14 to the extent that it is based upon a rate of interest which
15 exceeds the lesser of the following:

16 (1) The minimum rate of interest guaranteed under the
17 policy or contract.

18 (2) The rate of interest calculated as prescribed in the
19 standard valuation law of this state for determining the
20 minimum standard for the valuation of life insurance policies
21 issued during the year of insolvency which have an interest-
22 guaranteed duration of ten or fewer years.

23 b. That portion or part of a policy or contract under
24 which the risk is borne by the policyholder.

25 c. A policy or contract or part of a policy or contract
26 assumed by the impaired or insolvent insurer under a contract
27 of reinsurance, other than reinsurance for which assumption
28 certificates have been issued.

29 d. With respect to annuities, a benefit payment liability
30 under a policy or contract which is not subject to standard
31 nonforfeiture law, not annuitized, and does not provide
32 annuity purchase rates contractually guaranteed for ten or
33 more years.

34 e. A policy or contract issued by a company which is
35 licensed under chapters 509A, 510, 512, 512A, 514, 514B, 518,

1 518A, or 520.

2 f. Except for a policy issued pursuant to section 515.48,
3 subsection 5, paragraph "a", a policy or contract issued by a
4 company which is licensed under chapter 515.

5 g. An insurer which was placed under an order of
6 liquidation, rehabilitation, or conservation by a court prior
7 to the effective date of this Act is not an impaired insurer
8 or an insolvent insurer for the purposes of this chapter.

9 Sec. 4. NEW SECTION. 508C.4 CONSTRUCTION.

10 This chapter shall be liberally construed to effect its
11 purpose as provided under section 508C.2.

12 Sec. 5. NEW SECTION. 508C.5 DEFINITIONS.

13 As used in this chapter, unless the context otherwise
14 requires:

15 1. "Account" means any of the three accounts created under
16 section 508C.6.

17 2. "Association" means the Iowa life and health insurance
18 guaranty association created in section 508C.6.

19 3. "Commissioner" means the commissioner of insurance.

20 4. "Contractual obligation" means an obligation under a
21 covered policy.

22 5. "Covered policy" means a policy or contract within the
23 scope of this chapter as provided under section 508C.3.

24 6. "Impaired insurer" means a member insurer domiciled in
25 this state which, after the effective date of this Act, is
26 either of the following:

27 a. Deemed by the commissioner to be potentially unable to
28 fulfill its contractual obligations but is not an insolvent
29 insurer.

30 b. Placed under an order of rehabilitation or conservation
31 by a court of competent jurisdiction.

32 7. "Insolvent insurer" means a member insurer which after
33 the effective date of this Act becomes insolvent and is placed
34 under a final order of liquidation, rehabilitation, or
35 conservation by a court of competent jurisdiction.

1 8. "Member insurer" means a person licensed or who holds a
2 certificate of authority to transact in this state any kind of
3 insurance to which this chapter applies under section 508C.3,
4 including a person whose license or certificate of authority
5 has been suspended, revoked, not renewed, or voluntarily
6 withdrawn.

7 9. "Person" means an individual, corporation, partnership,
8 association, or voluntary organization.

9 10. "Premiums" means direct gross insurance premiums and
10 annuity considerations received on covered policies, less
11 return insurance premiums and annuity considerations and
12 dividends paid or credited to policyholders on the direct
13 business. "Premiums" do not include premiums and
14 considerations on contracts between insurers and reinsurers,
15 or amounts received and held by a member insurer in an account
16 or fund unless and until the amounts are applied by the member
17 insurer to the purchase of an annuity or other benefit for a
18 specific person.

19 11. "Resident" means a person who resides in this state,
20 or if a corporation has its principal place of business in
21 this state, at the time a member insurer is determined to be
22 an impaired or insolvent insurer, and to whom contractual
23 obligations are owed.

24 12. "Supplemental contract" means an agreement entered
25 into for the distribution of policy or contract proceeds.

26 Sec. 6. NEW SECTION. 508C.6 CREATION OF THE ASSOCIATION.

27 1. A nonprofit legal entity is created to be known as the
28 Iowa life and health insurance guaranty association. All
29 member insurers shall be and shall remain members of the
30 association as a condition of their authority to transact
31 insurance business in this state. The association shall
32 perform its functions under the plan of operation established
33 and approved under section 508C.10 and shall exercise its
34 powers through the board of directors established in section
35 508C.7. For purposes of administration and assessment, the

1 association shall maintain all of the following accounts:

2 a. A health insurance account.

3 b. A life insurance account.

4 c. An annuity account.

5 2. The association is subject to the immediate supervision
6 of the commissioner and the applicable provisions of the
7 insurance laws of this state.

8 Sec. 7. NEW SECTION. 508C.7 BOARD OF DIRECTORS.

9 1. The board of directors of the association shall consist
10 of not less than five nor more than nine member insurers
11 serving terms as established in the plan of operation. The
12 members of the board shall be selected by member insurers,
13 subject to the approval of the commissioner. Vacancies on the
14 board shall be filled for the remaining period of the term by
15 a majority vote of the remaining board members, subject to the
16 approval of the commissioner. To select the initial board of
17 directors, and initially organize the association, the
18 commissioner shall give notice to all member insurers of the
19 time and place of the organizational meeting. In determining
20 voting rights at the organizational meeting each member
21 insurer is entitled to one vote in person or by proxy. If the
22 board of directors is not selected within sixty days after
23 notice of the organizational meeting, the commissioner may
24 appoint the initial members.

25 2. In approving selections or in appointing members to the
26 board, the commissioner shall consider, among other factors,
27 whether all member insurers are fairly represented.

28 3. At the option of the association, members of the board
29 may be reimbursed from the assets of the association for
30 expenses incurred by them as members of the board of
31 directors. However, members of the board shall not otherwise
32 be compensated by the association for their services.

33 Sec. 8. NEW SECTION. 508C.8 POWERS AND DUTIES OF THE
34 ASSOCIATION.

35 1. If a domestic insurer is an impaired insurer, the

1 association, subject to conditions imposed by the association
2 and approved by the impaired insurer and the commissioner,
3 may:

4 a. Guarantee, assume, reinsure, or cause to be guaranteed,
5 assumed, or reinsured, any or all of the covered policies of
6 the impaired insurer.

7 b. Provide moneys, pledges, notes, guarantees, or other
8 means as proper to effectuate paragraph "a" and assure payment
9 of the contractual obligations of the impaired insurer pending
10 action under paragraph "a".

11 c. Loan money to the impaired insurer and guarantee
12 borrowings by the impaired insurer, provided the association
13 has concluded, based on reasonable assumptions, that there is
14 a likelihood of repayment of the loan and a probability that
15 unless a loan is made the association would incur substantial
16 liabilities under subsection 2.

17 2. If a domestic, foreign, or alien insurer is an
18 insolvent insurer, subject to the approval of the commissioner
19 the association shall:

20 a. Guarantee, assume, or reinsure, or cause to be
21 guaranteed, assumed, or reinsured the covered policies of the
22 insolvent insurer.

23 b. Assure payment of the contractual obligations of the
24 insolvent insurer.

25 c. Provide moneys, pledges, notes, guarantees, or other
26 means as reasonably necessary to discharge the duties
27 described in this subsection.

28 3. a. In carrying out its duties under subsection 2,
29 permanent policy liens or contract liens may be imposed in
30 connection with a guarantee, assumption, or reinsurance
31 agreement, if the court does both of the following:

32 (1) Finds either that the amounts which can be assessed
33 under this chapter are less than the amounts needed to assure
34 full and prompt performance of the insolvent insurer's
35 contractual obligations, or that the economic or financial

1 conditions as they affect member insurers are sufficiently
2 adverse to the public interest to justify the imposition of
3 policy or contract liens.

4 (2) Approves the specific policy liens or contract liens
5 to be used.

6 b. Before being obligated under subsection 2, the
7 association may request the imposition of a temporary
8 moratorium, not exceeding three years, or liens on payments of
9 cash values, termination values, and policy loans in addition
10 to any contractual provisions for deferral of cash values,
11 termination values, or policy loans. The temporary
12 moratoriums and liens may be imposed by the court as a
13 condition of the association's liability with respect to the
14 insolvent insurer.

15 c. The obligations of the association under subsection 2
16 regarding a covered policy shall be reduced to the extent that
17 the person entitled to the obligations has received payment of
18 all or any part of the contractual benefits payable under the
19 covered policy from any other source.

20 d. The association may offer modifications to the owners
21 of policies or contracts or classes of policies or contracts
22 issued by the insolvent insurer, if the association finds that
23 under the policies or contracts the benefits provided,
24 provisions pertaining to renewal, or the premiums charged or
25 which may be charged are not reasonable. If the owner of a
26 policy or contract to be modified fails or refuses to accept
27 the modification as approved by the court, the association may
28 terminate the policy or contract as of a date not less than
29 one hundred eighty days after the modification is sent to the
30 owner. The association shall have no liability under the
31 policy or contract for any claim incurred or continuing beyond
32 the termination date.

33 4. If the association fails to act within a reasonable
34 period of time as provided in subsection 2, the commissioner
35 shall have the powers and duties of the association under this

1 chapter with respect to insolvent insurers.

2 5. Upon request the association may give assistance and
3 advice to the commissioner concerning the rehabilitation,
4 payment of claims, continuance of coverage, or the performance
5 of other contractual obligations of an impaired or insolvent
6 insurer.

7 6. The association has standing to appear before any court
8 in this state with jurisdiction over an impaired or insolvent
9 insurer concerning which the association is or may become
10 obligated under this chapter. Standing shall extend to all
11 matters germane to the powers and duties of the association
12 including, but not limited to, proposals for reinsuring or
13 guaranteeing the covered policies of the impaired or insolvent
14 insurer and the determination of the covered policies and
15 contractual obligations.

16 7. a. A person receiving benefits under this chapter is
17 deemed to have assigned the rights under the covered policy to
18 the association to the extent of the benefits received under
19 this chapter, whether the benefits are payments of contractual
20 obligations or a continuation of coverage. The association
21 may require an assignment to the association of the rights by
22 a payee, policyholder or contract owner, beneficiary, insured,
23 or annuitant as a condition precedent to the receipt of any
24 rights or benefits conferred by this chapter upon the person.
25 The association shall be subrogated to these rights against
26 the assets of the insolvent insurer.

27 b. The subrogation rights of the association under this
28 subsection have the same priority against the assets of the
29 insolvent insurer as that possessed by the person entitled to
30 receive benefits under this chapter.

31 c. In addition to the rights pursuant to subsection 3,
32 paragraphs "a" and "b", the association shall have all common
33 law rights of subrogation and any other equitable or legal
34 remedy which would have been available to the insolvent
35 insurer or holder of a policy or contract.

1 8. The contractual obligations of the insolvent insurer,
2 for which the association becomes or may become liable, are as
3 great as but not greater than the contractual obligations of
4 the insolvent insurer would have been in the absence of an
5 insolvency, unless the obligations are reduced as permitted in
6 this chapter. However, with respect to any one life, the
7 aggregate liability of the association shall not exceed one
8 hundred thousand dollars in cash and termination values, or
9 three hundred thousand dollars for all benefits, including
10 cash and termination values, death benefits, annuity payments,
11 accident and health benefits, and all other amounts payable
12 under all policies or contracts of the insolvent insurer.

13 9. The association has no obligation for either of the
14 following:

15 a. To continue coverage, or to pay a claim for benefits to
16 any person under an individual accident, health, or disability
17 policy accruing more than three years following the date the
18 member insurer is adjudicated to be insolvent.

19 b. To issue a group conversion policy of any nature to a
20 person or to continue a group coverage in force for more than
21 sixty days following the date the member insurer was
22 adjudicated to be insolvent.

23 10. The association may do any of the following:

24 a. Enter into contracts as necessary or proper to carry
25 out this chapter.

26 b. Sue or be sued, including taking any legal actions
27 necessary or proper for recovery of any unpaid assessments
28 under section 508C.9.

29 c. Borrow money to effect the purposes of this chapter.
30 Any notes or other evidence of indebtedness of the association
31 held by domestic insurers and not in default qualify as
32 investments eligible for deposit under section 511.8,
33 subsection 16.

34 d. Employ or retain persons as necessary to handle the
35 financial transactions of the association, and to perform

1 other functions as necessary or proper under this chapter.

2 e. Negotiate and contract with a liquidator,
3 rehabilitator, conservator, or ancillary receiver to carry out
4 the powers and duties of the association.

5 f. Take legal action as necessary to avoid payment of
6 improper claims.

7 g. For the purposes of this chapter and to the extent
8 approved by the commissioner, exercise the powers of a
9 domestic life or health insurer. However, the association
10 shall not issue insurance policies or annuity contracts other
11 than those issued to perform the contractual obligations of
12 the impaired or insolvent insurer.

13 h. Join an organization of one or more other state
14 associations of similar purposes to further the purposes and
15 administer the powers and duties of the association.

16 Sec. 9. NEW SECTION. 508C.9 ASSESSMENTS.

17 1. For the purpose of providing the funds necessary to
18 carry out the powers and duties of the association, the board
19 of directors shall assess the member insurers, separately for
20 each account established pursuant to section 508C.6, at the
21 time and for the amounts the board finds necessary. An
22 assessment is due not less than thirty days after prior
23 written notice has been sent to the member insurers and
24 accrues interest at ten percent per annum commencing on the
25 due date.

26 2. There are two classes of assessments as follows:

27 a. Class A assessments shall be made for the purpose of
28 meeting administrative costs and other general expenses and
29 examinations conducted under section 508C.12, subsection 5,
30 not related to a particular impaired or insolvent insurer.

31 b. Class B assessments shall be made to the extent
32 necessary to carry out the powers and duties of the
33 association under section 508C.8 with regard to an impaired
34 domestic insurer or an insolvent domestic, foreign, or alien
35 insurer.

1 3. a. The amount of a class A assessment shall be
2 determined by the board and to the extent that class A
3 assessments do not exceed one hundred dollars per company in
4 any one calendar year may be made on a per capita basis. The
5 assessment shall be credited against future insolvency
6 assessments. The amount of a class B assessment shall be
7 allocated for assessment purposes among the accounts as the
8 liabilities and expenses of the association, either
9 experienced or reasonably expected, are attributable to those
10 accounts, all as determined by the association and on as
11 equitable a basis as is reasonably practical.

12 b. Class A assessments in excess of one hundred dollars
13 per company per calendar year and class B assessments against
14 member insurers for each account shall be in the proportion
15 that the aggregate premiums received on business in this state
16 by each assessed member insurer on policies or contracts
17 related to that account for the three calendar years preceding
18 the year of impairment or insolvency, bear to the aggregate
19 premiums received on business in this state by all assessed
20 member insurers on policies related to that account for the
21 three calendar years preceding the assessment.

22 c. Assessments for funds to meet the requirements of the
23 association with respect to an impaired or insolvent insurer
24 shall not be made until necessary to implement the purposes of
25 this chapter. Classification of assessments under this
26 subsection shall be made with a reasonable degree of accuracy,
27 recognizing that exact determinations may not always be
28 possible.

29 4. The association may abate or defer, in whole or in
30 part, the assessment of a member insurer if, in the opinion of
31 the board, payment of the assessment would endanger the
32 ability of the member insurer to fulfill its contractual
33 obligations. If an assessment against a member insurer is
34 abated or deferred, in whole or in part, the amount by which
35 the assessment is abated or deferred may be assessed against

1 the other member insurers in a manner consistent with the
2 basis for assessments set forth in this section.

3 5. The total of all assessments upon a member insurer for
4 each account shall not in any one calendar year exceed two
5 percent of the insurer's premiums received in this state
6 during the calendar year preceding the assessment on the
7 policies related to that account. If the maximum assessment,
8 together with the other assets of the association in either
9 account, does not provide in any one year in either account an
10 amount sufficient to carry out the responsibilities of the
11 association, the necessary additional funds shall be assessed
12 as soon as permitted by this chapter.

13 6. By an equitable method as established in the plan of
14 operation, the board may refund to member insurers, in
15 proportion to the contribution of each insurer to that
16 account, the amount by which the assets of the account,
17 including assets accruing from net realized gains and income
18 from investments, exceed the amount the board finds is
19 necessary to carry out during the coming year the obligations
20 of the association with regard to that account. A reasonable
21 amount may be retained in any account to provide funds for the
22 continuing expenses of the association and for future losses
23 if refunds are impractical.

24 7. In determining its premium rates and policyowner
25 dividends as to any kind of insurance within the scope of this
26 chapter, it is proper for a member insurer to consider the
27 amount reasonably necessary to meet its assessment obligations
28 under this chapter.

29 8. The association shall issue to each insurer paying a
30 class B assessment under this chapter, a certificate of
31 contribution in a form prescribed by the commissioner for the
32 amount of the assessment so paid. All outstanding
33 certificates shall be of equal dignity and priority without
34 reference to amounts or dates of issue. A certificate of
35 contribution may be shown by the insurer in its financial

1 statement as an asset in the form, for the amount and for a
2 period of time as the commissioner may approve.

3 Sec. 10. NEW SECTION. 508C.10 PLAN OF OPERATION.

4 1. a. The association shall submit to the commissioner a
5 plan of operation and any amendments to the plan of operation
6 necessary or suitable to assure the fair, reasonable, and
7 equitable administration of the association. The plan of
8 operation and any amendments to the plan are effective upon
9 the commissioner's written approval.

10 b. If the association fails to submit a suitable plan of
11 operation within one hundred eighty days following the
12 effective date of this Act or if at any time the association
13 fails to submit suitable amendments to the plan, the
14 commissioner shall, after notice and hearing, adopt rules
15 pursuant to chapter 17A as necessary or advisable to
16 effectuate this chapter. The rules shall continue in force
17 until modified by the commissioner or superseded by a plan
18 submitted by the association and approved by the commissioner.

19 2. All member insurers shall comply with the plan of
20 operation.

21 3. In addition to other requirements established in this
22 chapter the plan of operation shall establish all of the fol-
23 lowing:

24 a. Procedures for handling the assets of the association.

25 b. The amount and method of reimbursing members of the
26 board of directors under section 508C.7.

27 c. Regular places and times for meetings of the board of
28 directors.

29 d. Procedures for records to be kept of all financial
30 transactions of the association, its agents, and the board of
31 directors.

32 e. Procedures for selecting the board of directors and
33 submitting the selections to the commissioner.

34 f. Any additional procedures for assessments under section
35 508C.9.

1 g. Additional provisions necessary or proper for the ex-
2 ecution of the powers and duties of the association.

3 4. The plan of operation may provide that any powers and
4 duties of the association, except those under section 508C.8,
5 subsection 10, paragraph "c" and section 508C.9 are delegated
6 to a corporation, association, or other organization which
7 performs or will perform functions similar to those of this
8 association, or its equivalent, in two or more states. Such a
9 corporation, association, or organization shall be reimbursed
10 for any payments made on behalf of the association and shall
11 be paid for its performance of any function of the
12 association. A delegation under this subsection shall take
13 effect only with the approval of both the board of directors
14 and the commissioner. The delegation shall be made only to a
15 corporation, association, or organization which extends
16 protection at least as favorable and effective as that
17 provided by this chapter.

18 Sec. 11. NEW SECTION. 508C.11 DUTIES AND POWERS OF THE
19 COMMISSIONER.

20 1. The commissioner shall:

21 a. Upon request of the board of directors, provide the
22 association with a statement of the premiums for each member
23 insurer.

24 b. When an impairment is declared and the amount of the
25 impairment is determined, serve a demand upon the impaired
26 insurer to make good the impairment within a reasonable time.
27 Notice to the impaired insurer constitutes notice to its
28 shareholders, if any. The failure of the insurer to promptly
29 comply with the demand shall not excuse the association from
30 the performance of its powers and duties under this chapter.

31 c. In a liquidation or rehabilitation proceeding involving
32 a domestic insurer, be appointed as the liquidator or
33 rehabilitator. If a foreign or alien member insurer is
34 subject to a liquidation proceeding in its domiciliary
35 jurisdiction or state of entry, the commissioner shall be

1 appointed conservator.

2 2. After notice and hearing, the commissioner may suspend
3 or revoke the certificate of authority to transact insurance
4 in this state of a member insurer which fails to pay an
5 assessment when due or fails to comply with the plan of
6 operation. As an alternative, the commissioner may levy an
7 administrative penalty on any member insurer which fails to
8 pay an assessment when due. The administrative penalty shall
9 not exceed five percent of the unpaid assessment per month.
10 However, an administrative penalty shall not be less than one
11 hundred dollars per month.

12 3. An action of the board of directors or the association
13 may be appealed to the commissioner by a member insurer if the
14 appeal is taken within thirty days of the action being
15 appealed. A final action or order of the commissioner is
16 subject to judicial review pursuant to chapter 17A in a court
17 of competent jurisdiction.

18 4. The liquidator, rehabilitator, or conservator of an
19 impaired insurer may notify all interested persons of the
20 effect of this chapter.

21 Sec. 12. NEW SECTION. 508C.12 PREVENTION OF
22 INSOLVENCIES.

23 1. To aid in the detection and prevention of insurer
24 insolvencies or impairments the commissioner shall:

25 a. Notify the commissioners or insurance departments of
26 other states or territories of the United States and the
27 District of Columbia when any of the following actions against
28 a member insurer is taken:

29 (1) A license is revoked.

30 (2) A license is suspended.

31 (3) A formal order is made that a company restrict its
32 premium writing, obtain additional contributions to surplus,
33 withdraw from the state, reinsure all or any part of its
34 business, or increase capital, surplus, or any other account
35 for the security of policyholders or creditors.

1 Notice shall be mailed to the commissioners or departments
2 within thirty days following the earlier of when the action
3 was taken or the date on which the action occurs. This
4 subparagraph does not supersede section 507C.9, subsection 5.

5 b. Report to the board of directors when the commissioner
6 has taken any of the actions set forth in paragraph "a" or has
7 received a report from any other commissioner indicating that
8 any such action has been taken in another state. Reports to
9 the board of directors shall contain all significant details
10 of the action taken or the report received from another
11 commissioner.

12 c. Report to the board of directors when there is reason-
13 able cause to believe from an examination, whether completed
14 or in process, of a member company that the company may be an
15 impaired or insolvent insurer.

16 d. Furnish to the board of directors the national asso-
17 ciation of insurance commissioners' early warning tests. The
18 board may use the information in carrying out its duties and
19 responsibilities under this section. The report and the
20 information contained in the report shall be kept confidential
21 by the board of directors until such time as it is made public
22 by the commissioner or other lawful authority.

23 2. The commissioner may seek the advice and recommenda-
24 tions of the board of directors concerning any matter
25 affecting the commissioner's duties and responsibilities
26 regarding the financial condition of member companies and
27 companies seeking admission to transact insurance business in
28 this state.

29 3. The board of directors may upon majority vote make
30 reports and recommendations to the commissioner upon any mat-
31 ter germane to the solvency, liquidation, rehabilitation or
32 conservation of a member insurer or germane to the solvency of
33 a company seeking to transact insurance business in this
34 state. These reports and recommendations are not public
35 records pursuant to chapter 22.

1 4. Upon majority vote, the board of directors shall notify
2 the commissioner of any information indicating that a member
3 insurer may be an impaired or insolvent insurer.

4 5. Upon majority vote, the board of directors may request
5 that the commissioner order an examination of a member insurer
6 which the board in good faith believes may be an impaired or
7 insolvent insurer. The examination may be conducted as a na-
8 tional association of insurance commissioners examination or
9 may be conducted by persons designated by the commissioner.
10 The cost of the examination shall be paid by the association
11 and the examination report shall be treated as are other
12 examination reports. The examination report shall not be
13 released to the board of directors prior to its release to the
14 public, but this shall not preclude the commissioner from
15 complying with subsection 1. The commissioner shall notify
16 the board of directors when the examination is completed. The
17 request for an examination shall be kept on file by the
18 commissioner but it is not a public record pursuant to chapter
19 22 until the release of the examination report to the public.

20 6. Upon majority vote, the board of directors may make
21 recommendations to the commissioner for the detection and pre-
22 vention of insurer insolvencies.

23 7. At the conclusion of an insurer insolvency in which the
24 association was obligated to pay covered claims, the board of
25 directors shall prepare a report to the commissioner contain-
26 ing information as the board may have in its possession
27 bearing on the history and causes of the insolvency. The
28 board shall cooperate with the boards of directors of guaranty
29 associations in other states in preparing a report on the
30 history and causes of insolvency of a particular insurer, and
31 may adopt by reference any report prepared by other
32 associations.

33 Sec. 13. NEW SECTION. 508C.13 MISCELLANEOUS PROVISIONS.

34 1. This chapter does not reduce the liability for unpaid
35 assessments of the insureds on an impaired or insolvent

1 insurer operating under a plan with assessment liability other
2 than the plan of this chapter.

3 2. Records shall be kept of all negotiations and meetings
4 in which the association or its representatives are involved
5 to discuss the activities of the association in carrying out
6 its powers and duties under section 508C.8. Records of the
7 negotiations or meetings shall be made public pursuant to
8 chapter 22 only upon the termination of a liquidation,
9 rehabilitation, or conservation proceeding involving the
10 impaired or insolvent insurer, upon the termination of the
11 impairment or insolvency of the insurer, or upon the order of
12 a court of competent jurisdiction. This subsection does not
13 limit the duty of the association to render a report of its
14 activities under section 508C.15.

15 3. For the purpose of carrying out its obligations under
16 this chapter, the association shall be deemed to be a creditor
17 of the impaired or insolvent insurer to the extent of assets
18 attributable to covered policies reduced by any amounts to
19 which the association is entitled pursuant to its subrogation
20 rights under section 508C.8, subsection 7. Assets of the
21 impaired or insolvent insurer attributable to covered policies
22 shall be used to continue all covered policies and pay all
23 contractual obligations of the impaired or insolvent insurer
24 as required by this chapter. As used in this subsection,
25 "assets attributable to covered policies" means that
26 proportion of the assets which the reserves that should have
27 been established for the policies bear to the reserves that
28 should have been established for all policies of insurance
29 written by the impaired or insolvent insurer.

30 4. a. Prior to the termination of a liquidation,
31 rehabilitation, or conservation proceeding, the court may take
32 into consideration the contributions of the respective
33 parties, including the association, similar associations of
34 other states, the shareholders and policyowners of the
35 insolvent insurer, and any other party with a bona fide

1 interest, in making an equitable distribution of the ownership
2 rights of the insolvent insurer. When considering the
3 contributions, consideration shall be given to the welfare of
4 the policyholders of the continuing or successor insurer.

5 b. A distribution to stockholders, if any, of an impaired
6 or insolvent insurer shall not be made until the total amount
7 of valid claims of the association and of similar associations
8 of other states for funds expended in carrying out its powers
9 and duties under section 508C.8 with respect to the insurer
10 have been fully recovered by the association and the similar
11 associations.

12 5. a. Subject to the limitations of paragraphs "b," "c,"
13 and "d," if an order for liquidation or rehabilitation of an
14 insurer domiciled in this state has been entered, the receiver
15 appointed under the order may recover, on behalf of the
16 insurer, from any affiliate that controlled it, the amount of
17 distributions other than stock dividends paid by the insurer
18 on its capital stock made at any time during the five years
19 preceding the petition for liquidation or rehabilitation.

20 b. Stock dividends are not recoverable if the insurer
21 shows that when paid the distribution was lawful and
22 reasonable and that the insurer did not know and could not
23 reasonably have known that the distribution might adversely
24 affect the ability of the insurer to fulfill its contractual
25 obligations.

26 c. A person who was an affiliate that controlled the
27 insurer at the time the distributions were paid is liable up
28 to the amount of distributions received. A person who was an
29 affiliate that controlled the insurer at the time the
30 distributions were declared is liable up to the amount of
31 distributions that would have been received if they had been
32 paid immediately. If two persons are liable with respect to
33 the same distributions, they are jointly and severally liable.

34 d. The maximum amount recoverable under this subsection is
35 the amount needed in excess of all other available assets of

1 the insolvent insurer to pay the contractual obligations of
2 the insolvent insurer.

3 e. If a person liable under paragraph "c" is insolvent,
4 all its affiliates that controlled it at the time the dividend
5 was paid are jointly and severally liable for a resulting
6 deficiency in the amount recovered from the insolvent
7 affiliate.

8 Sec. 14. NEW SECTION. 508C.14 EXAMINATION OF THE
9 ASSOCIATION -- ANNUAL REPORT.

10 The association is subject to examination and regulation by
11 the commissioner. The board of directors shall submit to the
12 commissioner by May 1 of each year, a financial report for the
13 preceding calendar year and a report of its activities during
14 the preceding calendar year. The financial report shall be in
15 a form approved by the commissioner.

16 Sec. 15. NEW SECTION. 508C.15 TAX EXEMPTIONS.

17 The association is exempt from payment of all fees and all
18 taxes levied by this state or any of its subdivisions except
19 taxes levied on the association's real property.

20 Sec. 16. NEW SECTION. 508C.16 IMMUNITY.

21 A member insurer and its agents and employees, the
22 association and its agents and employees, members of the board
23 of directors, and the commissioner and the commissioner's
24 representatives are not liable for any action taken by them or
25 omission by them while acting within the scope of their
26 employment and in the performance of their powers and duties
27 under this chapter.

28 Sec. 17. NEW SECTION. 508C.17 STAY OF PROCEEDINGS --
29 REOPENING DEFAULT JUDGMENTS.

30 Proceedings in which the insolvent insurer is a party in a
31 court in this state shall be stayed sixty days from the date
32 an order of liquidation, rehabilitation, or conservation is
33 final to permit proper legal action by the association on
34 matters germane to its powers or duties. The association may
35 apply to have a judgment under a decision, order, verdict, or

1 finding based on default, set aside by the same court that
2 entered the judgment, and shall be permitted to defend against
3 the suit on the merits.

4 Sec. 18. NEW SECTION. 508C.18 PROHIBITED ADVERTISEMENTS.

5 A person, including an insurer, agent or affiliate of an
6 insurer shall not make, publish, disseminate, circulate, or
7 place before the public, or cause directly or indirectly, to
8 be made, published, disseminated, circulated, or placed before
9 the public in a newspaper, magazine, or other publication, or
10 in the form of a notice, circular, pamphlet, letter, or
11 poster, or over a radio station or television station, or in
12 any other way, an advertisement, announcement, or statement
13 which uses the existence of the insurance guaranty association
14 of this state for the purpose of sales, solicitation, or
15 inducement to purchase any form of insurance covered by this
16 chapter. However, this section does not apply to the
17 association or any other entity which does not sell or solicit
18 insurance.

19 Sec. 19. NEW SECTION. 508C.19 CREDITS FOR ASSESSMENTS
20 PAID.

21 1. An insurer may offset an assessment made pursuant to
22 section 508C.9 against its premium tax liability pursuant to
23 chapter 432 to the extent of twenty percent of the amount of
24 the assessment for each of the five calendar years following
25 the year in which the assessment was paid. If an insurer
26 ceases doing business, all uncredited assessments may be
27 credited against its premium tax liability for the year it
28 ceases doing business.

29 2. Sums acquired by refund from the association which have
30 been written off by contributing insurers and offset against
31 premium taxes as provided in subsection 1 and are not then
32 needed for purposes of this chapter shall be paid by the
33 association to the commissioner. The commissioner shall remit
34 the moneys to the treasurer of state to deposit in the state
35 general fund.

1 Sec. 20. Section 22.7, Code 1987, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 24. Information or reports collected or
4 submitted pursuant to section 508C.12, subsections 3 and 5,
5 and section 508C.13, subsection 2, except to the extent that
6 release is permitted under those sections.

7 EXPLANATION

8 This bill creates an Iowa life and health insurance
9 guaranty association. The association shall exercise powers
10 to protect policyholders of life and health insurance policies
11 and annuity contracts because of the impairment or insolvency
12 of a member insurer which issued the policies or contracts.
13 The association may make assessments against member insurers
14 to cover the administrative costs and to cover losses
15 resulting from such impairments or insolvencies. Member
16 insurers may partially offset their premium tax liability with
17 the assessment made to the association.

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SSB# 106
Commerce

NEW SF 460

SENATE/HOUSE FILE _____
BY (PREFILED DIVISION OF
INSURANCE OF THE DEPARTMENT
OF COMMERCE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating an Iowa life and health insurance guaranty
2 association, protecting persons, within limits, against the
3 failure of certain life, health, and annuity contracts because
4 of impairment or insolvency, specifying the powers and duties
5 of the association, and providing administrative procedures
6 and methods for the operation and financing of the
7 association, including but not limited to the assessment of
8 member insurers and the provision of a partial premium tax
9 liability credit.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUB COMMITTEE ASSIGNMENTS

CHAIR: *Holden*

COMMITTEE: *Commerce*

1 Section 1. NEW SECTION. 508C.1 TITLE.

2 This chapter shall be cited as the "Iowa Life and Health
3 Insurance Guaranty Association Act".

4 Sec. 2. NEW SECTION. 508C.2 PURPOSE.

5 1. The purpose of this chapter is to protect, subject to
6 certain limitations, the persons specified in section 508C.3,
7 subsection 1, against failure in the performance of
8 contractual obligations under life and health insurance
9 policies and annuity contracts specified in section 508C.3,
10 subsection 2, because of the impairment or insolvency of the
11 member insurer which issued the policies or contracts.

12 2. To provide this protection, an association of insurers
13 is created to enable the guaranty of payments of benefits and
14 of continuation of coverages as limited in this chapter.
15 Members of the association are subject to assessment to
16 provide funds to carry out the purpose of this chapter.

17 Sec. 3. NEW SECTION. 508C.3 SCOPE.

18 1. This chapter shall provide coverage under the policies
19 and contracts specified in subsection 2 to all of the
20 following:

21 a. Except for nonresident certificate holders under group
22 policies or contracts, persons who are the beneficiaries,
23 assignees, or payees of the persons covered under paragraph
24 "b".

25 b. Persons who are owners of the policies or contracts
26 specified in subsection 2, or are insureds or annuitants under
27 the policies or contracts, and who are either of the
28 following:

29 (1) Residents of this state.

30 (2) Nonresidents of this state if all of the following
31 conditions are met:

32 (a) The state in which the person resides has an
33 association similar to the association created in this
34 chapter.

35 (b) The person is not eligible for coverage by an

1 association described in subparagraph part (a).

2 (c) The insurer which issued the policy or contract never
3 held a license or certificate of authority in the state in
4 which the person resides.

5 (d) The insurer is domiciled in this state.

6 2. This chapter shall provide coverage to the persons
7 specified in subsection 1 under direct life insurance
8 policies, health insurance policies, annuity contracts,
9 supplemental contracts, and certificates under group policies
10 or contracts issued by member insurers.

11 3. This chapter does not apply to:

12 a. Any portion of a life, health, or annuity benefit
13 payment liability arising on or after the date of insolvency
14 to the extent that it is based upon a rate of interest which
15 exceeds the lesser of the following:

16 (1) The minimum rate of interest guaranteed under the
17 policy or contract.

18 (2) The rate of interest calculated as prescribed in the
19 standard valuation law of this state for determining the
20 minimum standard for the valuation of life insurance policies
21 issued during the year of insolvency which have an interest-
22 guaranteed duration of ten or fewer years.

23 b. That portion or part of a policy or contract under
24 which the risk is borne by the policyholder.

25 c. A policy or contract or part of a policy or contract
26 assumed by the impaired or insolvent insurer under a contract
27 of reinsurance, other than reinsurance for which assumption
28 certificates have been issued.

29 d. With respect to annuities, a benefit payment liability
30 under a policy or contract which is not subject to standard
31 nonforfeiture law, not annuitized, and does not provide
32 annuity purchase rates contractually guaranteed for ten or
33 more years.

34 e. A policy or contract issued by a company which is
35 licensed under chapters 509A, 510, 512, 512A, 514, 514B, 518,

1 518A, or 520.

2 f. Except for a policy issued pursuant to section 515.48,
3 subsection 5, paragraph "a", a policy or contract issued by a
4 company which is licensed under chapter 515.

5 g. An insurer which was placed under an order of
6 liquidation, rehabilitation, or conservation by a court prior
7 to the effective date of this Act is not an impaired insurer
8 or an insolvent insurer for the purposes of this chapter.

9 Sec. 4. NEW SECTION. 508C.4 CONSTRUCTION.

10 This chapter shall be liberally construed to effect its
11 purpose as provided under section 508C.2.

12 Sec. 5. NEW SECTION. 508C.5 DEFINITIONS.

13 As used in this chapter, unless the context otherwise
14 requires:

15 1. "Account" means any of the three accounts created under
16 section 508C.6.

17 2. "Association" means the Iowa life and health insurance
18 guaranty association created in section 508C.6.

19 3. "Commissioner" means the commissioner of insurance.

20 4. "Contractual obligation" means an obligation under a
21 covered policy.

22 5. "Covered policy" means a policy or contract within the
23 scope of this chapter as provided under section 508C.3.

24 6. "Impaired insurer" means a member insurer domiciled in
25 this state which, after the effective date of this Act, is
26 either of the following:

27 a. Deemed by the commissioner to be potentially unable to
28 fulfill its contractual obligations but is not an insolvent
29 insurer.

30 b. Placed under an order of rehabilitation or conservation
31 by a court of competent jurisdiction.

32 7. "Insolvent insurer" means a member insurer which after
33 the effective date of this Act becomes insolvent and is placed
34 under a final order of liquidation, rehabilitation, or
35 conservation by a court of competent jurisdiction.

1 8. "Member insurer" means a person licensed or who holds a
2 certificate of authority to transact in this state any kind of
3 insurance to which this chapter applies under section 508C.3,
4 including a person whose license or certificate of authority
5 has been suspended, revoked, not renewed, or voluntarily
6 withdrawn.

7 9. "Person" means an individual, corporation, partnership,
8 association, or voluntary organization.

9 10. "Premiums" means direct gross insurance premiums and
10 annuity considerations received on covered policies, less
11 return insurance premiums and annuity considerations and
12 dividends paid or credited to policyholders on the direct
13 business. "Premiums" do not include premiums and
14 considerations on contracts between insurers and reinsurers,
15 or amounts received and held by a member insurer in an account
16 or fund unless and until the amounts are applied by the member
17 insurer to the purchase of an annuity or other benefit for a
18 specific person.

19 11. "Resident" means a person who resides in this state,
20 or if a corporation has its principal place of business in
21 this state, at the time a member insurer is determined to be
22 an impaired or insolvent insurer, and to whom contractual
23 obligations are owed.

24 12. "Supplemental contract" means an agreement entered
25 into for the distribution of policy or contract proceeds.

26 Sec. 6. NEW SECTION. 508C.6 CREATION OF THE ASSOCIATION.

27 1. A nonprofit legal entity is created to be known as the
28 Iowa life and health insurance guaranty association. All
29 member insurers shall be and shall remain members of the
30 association as a condition of their authority to transact
31 insurance business in this state. The association shall
32 perform its functions under the plan of operation established
33 and approved under section 508C.10 and shall exercise its
34 powers through the board of directors established in section
35 508C.7. For purposes of administration and assessment, the

1 association shall maintain all of the following accounts:

2 a. A health insurance account.

3 b. A life insurance account.

4 c. An annuity account.

5 2. The association is subject to the immediate supervision
6 of the commissioner and the applicable provisions of the
7 insurance laws of this state.

8 Sec. 7. NEW SECTION. 508C.7 BOARD OF DIRECTORS.

9 1. The board of directors of the association shall consist
10 of not less than five nor more than nine member insurers
11 serving terms as established in the plan of operation. The
12 members of the board shall be selected by member insurers,
13 subject to the approval of the commissioner. Vacancies on the
14 board shall be filled for the remaining period of the term by
15 a majority vote of the remaining board members, subject to the
16 approval of the commissioner. To select the initial board of
17 directors, and initially organize the association, the
18 commissioner shall give notice to all member insurers of the
19 time and place of the organizational meeting. In determining
20 voting rights at the organizational meeting each member
21 insurer is entitled to one vote in person or by proxy. If the
22 board of directors is not selected within sixty days after
23 notice of the organizational meeting, the commissioner may
24 appoint the initial members.

25 2. In approving selections or in appointing members to the
26 board, the commissioner shall consider, among other factors,
27 whether all member insurers are fairly represented.

28 3. At the option of the association, members of the board
29 may be reimbursed from the assets of the association for
30 expenses incurred by them as members of the board of
31 directors. However, members of the board shall not otherwise
32 be compensated by the association for their services.

33 Sec. 8. NEW SECTION. 508C.8 POWERS AND DUTIES OF THE
34 ASSOCIATION.

35 1. If a domestic insurer is an impaired insurer, the

1 association, subject to conditions imposed by the association
2 and approved by the impaired insurer and the commissioner,
3 may:

4 a. Guarantee, assume, reinsure, or cause to be guaranteed,
5 assumed, or reinsured, any or all of the covered policies of
6 the impaired insurer.

7 b. Provide moneys, pledges, notes, guarantees, or other
8 means as proper to effectuate paragraph "a" and assure payment
9 of the contractual obligations of the impaired insurer pending
10 action under paragraph "a".

11 c. Loan money to the impaired insurer and guarantee
12 borrowings by the impaired insurer, provided the association
13 has concluded, based on reasonable assumptions, that there is
14 a likelihood of repayment of the loan and a probability that
15 unless a loan is made the association would incur substantial
16 liabilities under subsection 2.

17 2. If a domestic, foreign, or alien insurer is an
18 insolvent insurer, subject to the approval of the commissioner
19 the association shall:

20 a. Guarantee, assume, or reinsure, or cause to be
21 guaranteed, assumed, or reinsured the covered policies of the
22 insolvent insurer.

23 b. Assure payment of the contractual obligations of the
24 insolvent insurer.

25 c. Provide moneys, pledges, notes, guarantees, or other
26 means as reasonably necessary to discharge the duties
27 described in this subsection.

28 3. a. In carrying out its duties under subsection 2,
29 permanent policy liens or contract liens may be imposed in
30 connection with a guarantee, assumption, or reinsurance
31 agreement, if the court does both of the following:

32 (1) Finds either that the amounts which can be assessed
33 under this chapter are less than the amounts needed to assure
34 full and prompt performance of the insolvent insurer's
35 contractual obligations, or that the economic or financial

1 conditions as they affect member insurers are sufficiently
2 adverse to the public interest to justify the imposition of
3 policy or contract liens.

4 (2) Approves the specific policy liens or contract liens
5 to be used.

6 b. Before being obligated under subsection 2, the
7 association may request the imposition of a temporary
8 moratorium, not exceeding three years, or liens on payments of
9 cash values, termination values, and policy loans in addition
10 to any contractual provisions for deferral of cash values,
11 termination values, or policy loans. The temporary
12 moratoriums and liens may be imposed by the court as a
13 condition of the association's liability with respect to the
14 insolvent insurer.

15 c. The obligations of the association under subsection 2
16 regarding a covered policy shall be reduced to the extent that
17 the person entitled to the obligations has received payment of
18 all or any part of the contractual benefits payable under the
19 covered policy from any other source.

20 d. The association may offer modifications to the owners
21 of policies or contracts or classes of policies or contracts
22 issued by the insolvent insurer, if the association finds that
23 under the policies or contracts the benefits provided,
24 provisions pertaining to renewal, or the premiums charged or
25 which may be charged are not reasonable. If the owner of a
26 policy or contract to be modified fails or refuses to accept
27 the modification as approved by the court, the association may
28 terminate the policy or contract as of a date not less than
29 one hundred eighty days after the modification is sent to the
30 owner. The association shall have no liability under the
31 policy or contract for any claim incurred or continuing beyond
32 the termination date.

33 4. If the association fails to act within a reasonable
34 period of time as provided in subsection 2, the commissioner
35 shall have the powers and duties of the association under this

1 chapter with respect to insolvent insurers.

2 5. Upon request the association may give assistance and
3 advice to the commissioner concerning the rehabilitation,
4 payment of claims, continuance of coverage, or the performance
5 of other contractual obligations of an impaired or insolvent
6 insurer.

7 6. The association has standing to appear before any court
8 in this state with jurisdiction over an impaired or insolvent
9 insurer concerning which the association is or may become
10 obligated under this chapter. Standing shall extend to all
11 matters germane to the powers and duties of the association
12 including, but not limited to, proposals for reinsuring or
13 guaranteeing the covered policies of the impaired or insolvent
14 insurer and the determination of the covered policies and
15 contractual obligations.

16 7. a. A person receiving benefits under this chapter is
17 deemed to have assigned the rights under the covered policy to
18 the association to the extent of the benefits received under
19 this chapter, whether the benefits are payments of contractual
20 obligations or a continuation of coverage. The association
21 may require an assignment to the association of the rights by
22 a payee, policyholder or contract owner, beneficiary, insured,
23 or annuitant as a condition precedent to the receipt of any
24 rights or benefits conferred by this chapter upon the person.
25 The association shall be subrogated to these rights against
26 the assets of the insolvent insurer.

27 b. The subrogation rights of the association under this
28 subsection have the same priority against the assets of the
29 insolvent insurer as that possessed by the person entitled to
30 receive benefits under this chapter.

31 c. In addition to the rights pursuant to subsection 3,
32 paragraphs "a" and "b", the association shall have all common
33 law rights of subrogation and any other equitable or legal
34 remedy which would have been available to the insolvent
35 insurer or holder of a policy or contract.

1 8. The contractual obligations of the insolvent insurer,
2 for which the association becomes or may become liable, are as
3 great as but not greater than the contractual obligations of
4 the insolvent insurer would have been in the absence of an
5 insolvency, unless the obligations are reduced as permitted in
6 this chapter. However, with respect to any one life, the
7 aggregate liability of the association shall not exceed one
8 hundred thousand dollars in cash and termination values, or
9 three hundred thousand dollars for all benefits, including
10 cash and termination values, death benefits, annuity payments,
11 accident and health benefits, and all other amounts payable
12 under all policies or contracts of the insolvent insurer.

13 9. The association has no obligation for either of the
14 following:

15 a. To continue coverage, or to pay a claim for benefits to
16 any person under an individual accident, health, or disability
17 policy accruing more than three years following the date the
18 member insurer is adjudicated to be insolvent.

19 b. To issue a group conversion policy of any nature to a
20 person or to continue a group coverage in force for more than
21 sixty days following the date the member insurer was
22 adjudicated to be insolvent.

23 10. The association may do any of the following:

24 a. Enter into contracts as necessary or proper to carry
25 out this chapter.

26 b. Sue or be sued, including taking any legal actions
27 necessary or proper for recovery of any unpaid assessments
28 under section 508C.9.

29 c. Borrow money to effect the purposes of this chapter.
30 Any notes or other evidence of indebtedness of the association
31 held by domestic insurers and not in default qualify as
32 investments eligible for deposit under section 511.8,
33 subsection 16.

34 d. Employ or retain persons as necessary to handle the
35 financial transactions of the association, and to perform

1 other functions as necessary or proper under this chapter.

2 e. Negotiate and contract with a liquidator,
3 rehabilitator, conservator, or ancillary receiver to carry out
4 the powers and duties of the association.

5 f. Take legal action as necessary to avoid payment of
6 improper claims.

7 g. For the purposes of this chapter and to the extent
8 approved by the commissioner, exercise the powers of a
9 domestic life or health insurer. However, the association
10 shall not issue insurance policies or annuity contracts other
11 than those issued to perform the contractual obligations of
12 the impaired or insolvent insurer.

13 Join an organization of one or more other state
14 associations of similar purposes to further the purposes and
15 administer the powers and duties of the association.

16 Sec. 9. NEW SECTION. 508C.9 ASSESSMENTS.

17 1. For the purpose of providing the funds necessary to
18 carry out the powers and duties of the association, the board
19 of directors shall assess the member insurers, separately for
20 each account established pursuant to section 508C.6, at the
21 time and for the amounts the board finds necessary. An
22 assessment is due not less than thirty days after prior
23 written notice has been sent to the member insurers and
24 accrues interest at ten percent per annum commencing on the
25 due date.

26 2. There are two classes of assessments as follows:

27 a. Class A assessments shall be made for the purpose of
28 meeting administrative costs and other general expenses and
29 examinations conducted under section 508C.12, subsection 5,
30 not related to a particular impaired or insolvent insurer.

31 b. Class B assessments shall be made to the extent
32 necessary to carry out the powers and duties of the
33 association under section 508C.8 with regard to an impaired
34 domestic insurer or an insolvent domestic, foreign, or alien
35 insurer.

1 3. a. The amount of a class A assessment shall be
2 determined by the board and to the extent that class A
3 assessments do not exceed one hundred dollars per company in
4 any one calendar year may be made on a per capita basis. The
5 assessment shall be credited against future insolvency
6 assessments. The amount of a class B assessment shall be
7 allocated for assessment purposes among the accounts as the
8 liabilities and expenses of the association, either
9 experienced or reasonably expected, are attributable to those
10 accounts, all as determined by the association and on as
11 equitable a basis as is reasonably practical.

12 b. Class A assessments in excess of one hundred dollars
13 per company per calendar year and class B assessments against
14 member insurers for each account shall be in the proportion
15 that the aggregate premiums received on business in this state
16 by each assessed member insurer on policies or contracts
17 related to that account for the three calendar years preceding
18 the year of impairment or insolvency, bear to the aggregate
19 premiums received on business in this state by all assessed
20 member insurers on policies related to that account for the
21 three calendar years preceding the assessment.

22 c. Assessments for funds to meet the requirements of the
23 association with respect to an impaired or insolvent insurer
24 shall not be made until necessary to implement the purposes of
25 this chapter. Classification of assessments under this
26 subsection shall be made with a reasonable degree of accuracy,
27 recognizing that exact determinations may not always be
28 possible.

29 4. The association may abate or defer, in whole or in
30 part, the assessment of a member insurer if, in the opinion of
31 the board, payment of the assessment would endanger the
32 ability of the member insurer to fulfill its contractual
33 obligations. If an assessment against a member insurer is
34 abated or deferred, in whole or in part, the amount by which
35 the assessment is abated or deferred may be assessed against

1 the other member insurers in a manner consistent with the
2 basis for assessments set forth in this section.

3 5. The total of all assessments upon a member insurer for
4 each account shall not in any one calendar year exceed two
5 percent of the insurer's premiums received in this state
6 during the calendar year preceding the assessment on the
7 policies related to that account. If the maximum assessment,
8 together with the other assets of the association in either
9 account, does not provide in any one year in either account an
10 amount sufficient to carry out the responsibilities of the
11 association, the necessary additional funds shall be assessed
12 as soon as permitted by this chapter.

13 6. By an equitable method as established in the plan of
14 operation, the board may refund to member insurers, in
15 proportion to the contribution of each insurer to that
16 account, the amount by which the assets of the account,
17 including assets accruing from net realized gains and income
18 from investments, exceed the amount the board finds is
19 necessary to carry out during the coming year the obligations
20 of the association with regard to that account. A reasonable
21 amount may be retained in any account to provide funds for the
22 continuing expenses of the association and for future losses
23 if refunds are impractical.

24 7. In determining its premium rates and policyowner
25 dividends as to any kind of insurance within the scope of this
26 chapter, it is proper for a member insurer to consider the
27 amount reasonably necessary to meet its assessment obligations
28 under this chapter.

29 8. The association shall issue to each insurer paying a
30 class B assessment under this chapter, a certificate of
31 contribution in a form prescribed by the commissioner for the
32 amount of the assessment so paid. All outstanding
33 certificates shall be of equal dignity and priority without
34 reference to amounts or dates of issue. A certificate of
35 contribution may be shown by the insurer in its financial

1 statement as an asset in the form, for the amount and for a
2 period of time as the commissioner may approve.

3 Sec. 10. NEW SECTION. 508C.10 PLAN OF OPERATION.

4 1. a. The association shall submit to the commissioner a
5 plan of operation and any amendments to the plan of operation
6 necessary or suitable to assure the fair, reasonable, and
7 equitable administration of the association. The plan of
8 operation and any amendments to the plan are effective upon
9 the commissioner's written approval.

10 b. If the association fails to submit a suitable plan of
11 operation within one hundred eighty days following the
12 effective date of this Act or if at any time the association
13 fails to submit suitable amendments to the plan, the
14 commissioner shall, after notice and hearing, adopt rules
15 pursuant to chapter 17A as necessary or advisable to
16 effectuate this chapter. The rules shall continue in force
17 until modified by the commissioner or superseded by a plan
18 submitted by the association and approved by the commissioner.

19 2. All member insurers shall comply with the plan of
20 operation.

21 3. In addition to other requirements established in this
22 chapter the plan of operation shall establish all of the fol-
23 lowing:

24 a. Procedures for handling the assets of the association.

25 b. The amount and method of reimbursing members of the
26 board of directors under section 508C.7.

27 c. Regular places and times for meetings of the board of
28 directors.

29 d. Procedures for records to be kept of all financial
30 transactions of the association, its agents, and the board of
31 directors.

32 e. Procedures for selecting the board of directors and
33 submitting the selections to the commissioner.

34 f. Any additional procedures for assessments under section
35 508C.9.

1 g. Additional provisions necessary or proper for the ex-
2 ecution of the powers and duties of the association.

3 4. The plan of operation may provide that any powers and
4 duties of the association, except those under section 508C.8,
5 subsection 10, paragraph "c" and section 508C.9 are delegated
6 to a corporation, association, or other organization which
7 performs or will perform functions similar to those of this
8 association, or its equivalent, in two or more states. Such a
9 corporation, association, or organization shall be reimbursed
10 for any payments made on behalf of the association and shall
11 be paid for its performance of any function of the
12 association. A delegation under this subsection shall take
13 effect only with the approval of both the board of directors
14 and the commissioner. The delegation shall be made only to a
15 corporation, association, or organization which extends
16 protection at least as favorable and effective as that
17 provided by this chapter.

18 Sec. 11. NEW SECTION. 508C.11 DUTIES AND POWERS OF THE
19 COMMISSIONER.

20 1. The commissioner shall:

21 a. Upon request of the board of directors, provide the
22 association with a statement of the premiums for each member
23 insurer.

24 b. When an impairment is declared and the amount of the
25 impairment is determined, serve a demand upon the impaired
26 insurer to make good the impairment within a reasonable time.
27 Notice to the impaired insurer constitutes notice to its
28 shareholders, if any. The failure of the insurer to promptly
29 comply with the demand shall not excuse the association from
30 the performance of its powers and duties under this chapter.

31 c. In a liquidation or rehabilitation proceeding involving
32 a domestic insurer, be appointed as the liquidator or
33 rehabilitator. If a foreign or alien member insurer is
34 subject to a liquidation proceeding in its domiciliary
35 jurisdiction or state of entry, the commissioner shall be

1 appointed conservator.

2 2. After notice and hearing, the commissioner may suspend
3 or revoke the certificate of authority to transact insurance
4 in this state of a member insurer which fails to pay an
5 assessment when due or fails to comply with the plan of
6 operation. As an alternative, the commissioner may levy an
7 administrative penalty on any member insurer which fails to
8 pay an assessment when due. The administrative penalty shall
9 not exceed five percent of the unpaid assessment per month.
10 However, an administrative penalty shall not be less than one
11 hundred dollars per month.

12 3. An action of the board of directors or the association
13 may be appealed to the commissioner by a member insurer if the
14 appeal is taken within thirty days of the action being
15 appealed. A final action or order of the commissioner is
16 subject to judicial review pursuant to chapter 17A in a court
17 of competent jurisdiction.

18 4. The liquidator, rehabilitator, or conservator of an
19 impaired insurer may notify all interested persons of the
20 effect of this chapter.

21 Sec. 12. NEW SECTION. 508C.12 PREVENTION OF
22 INSOLVENCIES.

23 1. To aid in the detection and prevention of insurer
24 insolvencies or impairments the commissioner shall:

25 a. Notify the commissioners or insurance departments of
26 other states or territories of the United States and the
27 District of Columbia when any of the following actions against
28 a member insurer is taken:

29 (1) A license is revoked.

30 (2) A license is suspended.

31 (3) A formal order is made that a company restrict its
32 premium writing, obtain additional contributions to surplus,
33 withdraw from the state, reinsure all or any part of its
34 business, or increase capital, surplus, or any other account
35 for the security of policyholders or creditors.

1 Notice shall be mailed to the commissioners or departments
2 within thirty days following the earlier of when the action
3 was taken or the date on which the action occurs. This
4 subparagraph does not supersede section 507C.9, subsection 5.

5 b. Report to the board of directors when the commissioner
6 has taken any of the actions set forth in paragraph "a" or has
7 received a report from any other commissioner indicating that
8 any such action has been taken in another state. Reports to
9 the board of directors shall contain all significant details
10 of the action taken or the report received from another
11 commissioner.

12 c. Report to the board of directors when there is reason-
13 able cause to believe from an examination, whether completed
14 or in process, of a member company that the company may be an
15 impaired or insolvent insurer.

16 d. Furnish to the board of directors the national asso-
17 ciation of insurance commissioners' early warning tests. The
18 board may use the information in carrying out its duties and
19 responsibilities under this section. The report and the
20 information contained in the report shall be kept confidential
21 by the board of directors until such time as it is made public
22 by the commissioner or other lawful authority.

23 2. The commissioner may seek the advice and recommenda-
24 tions of the board of directors concerning any matter
25 affecting the commissioner's duties and responsibilities
26 regarding the financial condition of member companies and
27 companies seeking admission to transact insurance business in
28 this state.

29 3. The board of directors may upon majority vote make
30 reports and recommendations to the commissioner upon any mat-
31 ter germane to the solvency, liquidation, rehabilitation or
32 conservation of a member insurer or germane to the solvency of
33 a company seeking to transact insurance business in this
34 state. These reports and recommendations are not public
35 records pursuant to chapter 22.

1 4. Upon majority vote, the board of directors shall notify
2 the commissioner of any information indicating that a member
3 insurer may be an impaired or insolvent insurer.

4 5. Upon majority vote, the board of directors may request
5 that the commissioner order an examination of a member insurer
6 which the board in good faith believes may be an impaired or
7 insolvent insurer. The examination may be conducted as a na-
8 tional association of insurance commissioners examination or
9 may be conducted by persons designated by the commissioner.
10 The cost of the examination shall be paid by the association
11 and the examination report shall be treated as are other
12 examination reports. The examination report shall not be
13 released to the board of directors prior to its release to the
14 public, but this shall not preclude the commissioner from
15 complying with subsection 1. The commissioner shall notify
16 the board of directors when the examination is completed. The
17 request for an examination shall be kept on file by the
18 commissioner but it is not a public record pursuant to chapter
19 22 until the release of the examination report to the public.

20 6. Upon majority vote, the board of directors may make
21 recommendations to the commissioner for the detection and pre-
22 vention of insurer insolvencies.

23 7. At the conclusion of an insurer insolvency in which the
24 association was obligated to pay covered claims, the board of
25 directors shall prepare a report to the commissioner contain-
26 ing information as the board may have in its possession
27 bearing on the history and causes of the insolvency. The
28 board shall cooperate with the boards of directors of guaranty
29 associations in other states in preparing a report on the
30 history and causes of insolvency of a particular insurer, and
31 may adopt by reference any report prepared by other
32 associations.

33 Sec. 13. NEW SECTION. 508C.13 MISCELLANEOUS PROVISIONS.

34 1. This chapter does not reduce the liability for unpaid
35 assessments of the insureds on an impaired or insolvent

1 insurer operating under a plan with assessment liability other
2 than the plan of this chapter.

3 2. Records shall be kept of all negotiations and meetings
4 in which the association or its representatives are involved
5 to discuss the activities of the association in carrying out
6 its powers and duties under section 508C.8. Records of the
7 negotiations or meetings shall be made public pursuant to
8 chapter 22 only upon the termination of a liquidation,
9 rehabilitation, or conservation proceeding involving the
10 impaired or insolvent insurer, upon the termination of the
11 impairment of insolvency of the insurer, or upon the order of
12 a court of competent jurisdiction. This subsection does not
13 limit the duty of the association to render a report of its
14 activities under section 508C.15.

15 3. For the purpose of carrying out its obligations under
16 this chapter, the association shall be deemed to be a creditor
17 of the impaired or insolvent insurer to the extent of assets
18 attributable to covered policies reduced by any amounts to
19 which the association is entitled pursuant to its subrogation
20 rights under section 508C.8, subsection 7. Assets of the
21 impaired or insolvent insurer attributable to covered policies
22 shall be used to continue all covered policies and pay all
23 contractual obligations of the impaired or insolvent insurer
24 as required by this chapter. As used in this subsection,
25 "assets attributable to covered policies" means that
26 proportion of the assets which the reserves that should have
27 been established for the policies bear to the reserves that
28 should have been established for all policies of insurance
29 written by the impaired or insolvent insurer.

30 4. a. Prior to the termination of a liquidation,
31 rehabilitation, or conservation proceeding, the court may take
32 into consideration the contributions of the respective
33 parties, including the association, similar associations of
34 other states, the shareholders and policyowners of the
35 insolvent insurer, and any other party with a bona fide

1 interest, in making an equitable distribution of the ownership
2 rights of the insolvent insurer. When considering the
3 contributions, consideration shall be given to the welfare of
4 the policyholders of the continuing or successor insurer.

5 b. A distribution to stockholders, if any, of an impaired
6 or insolvent insurer shall not be made until the total amount
7 of valid claims of the association and of similar associations
8 of other states for funds expended in carrying out its powers
9 and duties under section 508C.8 with respect to the insurer
10 have been fully recovered by the association and the similar
11 associations.

12 5. a. Subject to the limitations of paragraphs "b," "c,"
13 and "d," if an order for liquidation or rehabilitation of an
14 insurer domiciled in this state has been entered, the receiver
15 appointed under the order may recover, on behalf of the
16 insurer, from any affiliate that controlled it, the amount of
17 distributions other than stock dividends paid by the insurer
18 on its capital stock made at any time during the five years
19 preceding the petition for liquidation or rehabilitation.

20 b. Stock dividends are not recoverable if the insurer
21 shows that when paid the distribution was lawful and
22 reasonable and that the insurer did not know and could not
23 reasonably have known that the distribution might adversely
24 affect the ability of the insurer to fulfill its contractual
25 obligations.

26 c. A person who was an affiliate that controlled the
27 insurer at the time the distributions were paid is liable up
28 to the amount of distributions received. A person who was an
29 affiliate that controlled the insurer at the time the
30 distributions were declared is liable up to the amount of
31 distributions that would have been received if they had been
32 paid immediately. If two persons are liable with respect to
33 the same distributions, they are jointly and severally liable.

34 d. The maximum amount recoverable under this subsection is
35 the amount needed in excess of all other available assets of

1 the insolvent insurer to pay the contractual obligations of
2 the insolvent insurer.

3 e. If a person liable under paragraph "c" is insolvent,
4 all its affiliates that controlled it at the time the dividend
5 was paid are jointly and severally liable for a resulting
6 deficiency in the amount recovered from the insolvent
7 affiliate.

8 Sec. 14. NEW SECTION. 508C.14 EXAMINATION OF THE
9 ASSOCIATION -- ANNUAL REPORT.

10 The association is subject to examination and regulation by
11 the commissioner. The board of directors shall submit to the
12 commissioner by May 1 of each year, a financial report for the
13 preceding calendar year and a report of its activities during
14 the preceding calendar year. The financial report shall be in
15 a form approved by the commissioner.

16 Sec. 15. NEW SECTION. 508C.15 TAX EXEMPTIONS.

17 The association is exempt from payment of all fees and all
18 taxes levied by this state or any of its subdivisions except
19 taxes levied on the association's real property.

20 Sec. 16. NEW SECTION. 508C.16 IMMUNITY.

21 A member insurer and its agents and employees, the
22 association and its agents and employees, members of the board
23 of directors, and the commissioner and the commissioner's
24 representatives are not liable for any action taken by them or
25 omission by them while acting within the scope of their
26 employment and in the performance of their powers and duties
27 under this chapter.

28 Sec. 17. NEW SECTION. 508C.17 STAY OF PROCEEDINGS --
29 REOPENING DEFAULT JUDGMENTS.

30 Proceedings in which the insolvent insurer is a party in a
31 court in this state shall be stayed sixty days from the date
32 an order of liquidation, rehabilitation, or conservation is
33 final to permit proper legal action by the association on
34 matters germane to its powers or duties. The association may
35 apply to have a judgment under a decision, order, verdict, or

1 finding based on default, set aside by the same court that
2 entered the judgment, and shall be permitted to defend against
3 the suit on the merits.

4 Sec. 18. NEW SECTION. 508C.18 PROHIBITED ADVERTISEMENTS.

5 A person, including an insurer, agent or affiliate of an
6 insurer shall not make, publish, disseminate, circulate, or
7 place before the public, or cause directly or indirectly, to
8 be made, published, disseminated, circulated, or placed before
9 the public in a newspaper, magazine, or other publication, or
10 in the form of a notice, circular, pamphlet, letter, or
11 poster, or over a radio station or television station, or in
12 any other way, an advertisement, announcement, or statement
13 which uses the existence of the insurance guaranty association
14 of this state for the purpose of sales, solicitation, or
15 inducement to purchase any form of insurance covered by this
16 chapter. However, this section does not apply to the
17 association or any other entity which does not sell or solicit
18 insurance.

19 Sec. 19. NEW SECTION. 508C.19 CREDITS FOR ASSESSMENTS
20 PAID.

21 1. An insurer may offset an assessment made pursuant to
22 section 508C.9 against its premium tax liability pursuant to
23 chapter 432 to the extent of twenty percent of the amount of
24 the assessment for each of the five calendar years following
25 the year in which the assessment was paid. If an insurer
26 ceases doing business, all uncredited assessments may be
27 credited against its premium tax liability for the year it
28 ceases doing business.

29 2. Sums acquired by refund from the association which have
30 been written off by contributing insurers and offset against
31 premium taxes as provided in subsection 1 and are not then
32 needed for purposes of this chapter shall be paid by the
33 association to the commissioner. The commissioner shall remit
34 the moneys to the treasurer of state to deposit in the state
35 general fund.

1 Sec. 20. Section 22.7, Code 1987, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 24. Information or reports collected or
4 submitted pursuant to section 508C.12, subsections 3 and 5,
5 and section 508C.13, subsection 2, except to the extent that
6 release is permitted under those sections.

7 EXPLANATION

8 This bill creates an Iowa life and health insurance
9 guaranty association. The association shall exercise powers
10 to protect policyholders of life and health insurance policies
11 and annuity contracts because of the impairment or insolvency
12 of a member insurer which issued the policies or contracts.
13 The association may make assessments against member insurers
14 to cover the administrative costs and to cover losses
15 resulting from such impairments or insolvencies. Member
16 insurers may partially offset their premium tax liability with
17 the assessment made to the association.

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