

## INSURANCE GUARANTY ASSOCIATION

### **515B.1 Scope.**

This chapter shall apply to all kinds of direct insurance authorized to be written by an insurer licensed to operate in this state under chapter 515 or chapter 520, but shall not be applicable to the following:

1. Life, annuity, health, or disability insurance.
2. Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks.
3. Fidelity or surety bonds, or any other bonding obligations.
4. Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
5. Insurance warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.
6. Title insurance.
7. Ocean marine insurance.
8. A transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
9. Insurance provided by or guaranteed by government.

[C71, 73, 75, 77, 79, 81, § 515B.1]

86 Acts, ch 1184, § 2; 88 Acts, ch 1112, § 504; 97 Acts, ch 186, §13; 2001 Acts, ch 69, §31

### **515B.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Association*" means the Iowa insurance guaranty association created pursuant to section 515B.3.
2. "*Claimant*" means an insured making a first party claim or any person instituting a liability claim against the insured of an insolvent insurer. "*Claimant*" does not include a person who is an affiliate of an insolvent insurer.
3. "*Commissioner*" means the commissioner of insurance of this state.
4. a. "*Covered claim*" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is a first party claim by an insured for damage to property permanently located in this state.

b. "*Covered claim*" does not include any amount as follows:

(1) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

(2) That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(3) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(4) That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

(5) That is a fine, penalty, interest, or punitive or exemplary damages.

(6) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth greater than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

(8) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding the subparagraphs of this lettered paragraph, a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. "*Insurer*" means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual insurance associations licensed under chapter 518 or chapter 518A, or fraternal benefit societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

6. "*Insolvent insurer*" means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

7. "*Net direct written premiums*" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

8. "Person" means any individual, corporation, partnership, association, or voluntary organization.

[C71, 73, 75, 77, 79, 81, § 515B.2; 82 Acts, ch 1137, § 2]

86 Acts, ch 1184, § 35; 88 Acts, ch 1112, § 505, 506; 89 Acts, ch 83, §74; 91 Acts, ch 26, §43; 93 Acts, ch 88, §22; 97 Acts, ch 186, §14; 2000 Acts, ch 1023, §30; 2001 Acts, ch 24, §55; 2003 Acts, ch 91, §40; 2005 Acts, ch 70, §22

### **515B.3 Creation of the association.**

There is created a nonprofit unincorporated legal entity to be known as the Iowa insurance guaranty association. All insurers as defined in section 515B.2, subsection 5 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 515B.6 and shall exercise its powers through a board of directors established under section 515B.4. Except as otherwise provided in such plan of operation, annual or special meetings of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance, upon not less than ten days' written notice by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office, specifying the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person or by proxy and ten members present in person or by proxy shall constitute a quorum for the transaction of any business.

[C71, 73, 75, 77, 79, 81, § 515B.3]

### **515B.4 Board of directors.**

The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors, subject to the approval of the commissioner.

In approving selections to the board the commissioner shall consider among other things whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

[C71, 73, 75, 77, 79, 81, § 515B.4]

### **515B.5 Duties and powers of the association.**

1. The association shall:

*a.* Be obligated to pay covered claims existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation, or before the policy expiration date if less than thirty days after the final order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.

(2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(3) An amount not exceeding the lesser of the policy limits or three hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

*b.* Be obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy of the insolvent insurer. However, the association is not obligated to pay a claimant an amount in excess of the obligation under the policy of the insolvent insurer, regardless of whether such claim is based on contract or tort.

*c.* Assess member insurers amounts necessary to pay the obligations of the association under paragraph "a" of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

The association shall also have the right to pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment or tender to an excess insurer of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

*d.* Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligations on covered claims and deny all other claims. The association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which settlements, releases, and judgments may properly be contested, and, to that end, any uncontested or default judgment against the insolvent insurer or its insured shall not be binding on the association. The association shall have the right to appoint or substitute legal counsel retained to defend insureds on covered claims.

*e.* Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph "a".

*f.* Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

*g.* Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

- a. Appear in, defend, and appeal any action on a claim brought against the association.
- b. Employ or retain persons necessary to handle claims and perform other duties of the association.
- c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.
- d. Sue or be sued.
- e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.
- f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2, and the workers' compensation commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

[C71, 73, 75, 77, 79, 81, § 515B.5; 82 Acts, ch 1051, § 2]

86 Acts, ch 1184, § 6; 88 Acts, ch 1112, § 507; 91 Acts, ch 26, § 44; 92 Acts, ch 1162, § 40, 41; 97 Acts, ch 186, §15, 16; 98 Acts, ch 1061, §11; 2001 Acts, ch 69, §32; 2002 Acts, ch 1111, §20, 21

### **515B.6 Plan of operation.**

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the commissioner.

If the association fails to submit a suitable plan of operation within ninety days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and opportunity for hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

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

3. The plan of operation shall:

- a. Establish the procedures for performance of all the duties and powers of the association under section 515B.5.
- b. Establish procedures for managing assets of the association.
- c. Establish the amount and method of reimbursing members of the board of directors under section 515B.4.
- d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
- e. Establish regular places and times for meetings of the board of directors.
- f. Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.
- g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
- h. Establish procedures for submission to the commissioner of selections for the board of directors.
- i. Contain additional provisions necessary or proper for the execution of the duties and powers of the association.

4. The plan of operation may provide that any or all duties and powers of the association, except those under section 515B.5, subsection 1, paragraph "c", and subsection 2, paragraph "c", are delegated to a person which performs or will perform functions similar to those of this association in two or more states. Such person shall be reimbursed as a servicing facility and shall be paid for performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a person which extends protection not substantially less favorable and effective than that provided by this chapter.

[C71, 73, 75, 77, 79, 81, § 515B.6]

#### **515B.7 Duties and powers of the commissioner.**

1. The commissioner shall:

- a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.
- b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may:

- a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if the commissioner finds claims are being processed unsatisfactorily.

3. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, § 515B.7]

2003 Acts, ch 44, §114

### **515B.8 Effect of paid claims.**

1. Any person recovering under this chapter shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

2. The association and any similar entity in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this chapter or under similar law in another state, and shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

[C71, 73, 75, 77, 79, 81, § 515B.8]

97 Acts, ch 186, §17; 2003 Acts, ch 91, §41

### **515B.9 Nonduplication of recovery.**

1. Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance.

Any amount payable on a covered claim shall be reduced by the full applicable limits of such other insurance policy and the association shall receive full credit for such limits or where there are no applicable limits, the

claim shall be reduced by the total recovery.

*a.* A policy providing liability coverage to a person who may be jointly and severally liable with, or a joint tortfeasor with, the person covered under the policy of the insolvent insurer shall be first exhausted before any claim is made against the association and the association shall receive credit for the same as provided above.

*b.* For purposes of this section, an insurance policy means a policy issued by an insurance company, whether or not a member insurer, which policy insures any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery shall be first sought from the association of the location of the property. If the claim is a workers' compensation claim, recovery shall be first sought from the association of the residence of the claimant. Any sums recovered from any other guaranty association or equivalent organization shall be subtracted from the maximum liability of the association under section 515B.5, subsection 1, paragraph "a".

[C71, 73, 75, 77, 79, 81, § 515B.9]

86 Acts, ch 1184, § 7; 88 Acts, ch 1112, § 508; 91 Acts, ch 26, §45; 2003 Acts, ch 91, §42

#### **515B.10 Prevention of insolvencies.**

1. *a.* To aid in the detection and prevention of insurer insolvencies the board of directors, upon majority vote, may do either of the following:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(2) Respond to a request by the commissioner to discuss and make recommendations regarding the status of member insurers whose financial condition may be hazardous to policyholders or the public.

*b.* At the conclusion of a domestic insurer insolvency, the board of directors may prepare a report based on the information available to the association on the history and causes of the insolvency. The report may be submitted to the commissioner.

2. Recommendations and reports made pursuant to subsection 1, paragraph "a", subparagraph (2), are not public records under chapter 22.

[C71, 73, 75, 77, 79, 81, § 515B.10]

86 Acts, ch 1184, § 8

#### **515B.11 Examination of the association.**

The association is subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

[C71, 73, 75, 77, 79, 81, § 515B.11]



### **515B.12 Tax exemption.**

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on property.

[C71, 73, 75, 77, 79, 81, § 515B.12]

89 Acts, ch 296, §73

### **515B.13 Recognition of assessments in rates.**

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive as a result of containing such recoupment allowances.

[C71, 73, 75, 77, 79, 81, § 515B.13]

### **515B.14 Immunity.**

There is no liability, and no cause of action of any nature shall arise against any member insurer, the association, its agents or employees, the board of directors, the commissioner, or the commissioner's representatives, for any reasonable action taken by them in the performance of their duties and powers under this chapter.

[C71, 73, 75, 77, 79, 81, § 515B.14]

### **515B.15 Stay of proceedings.**

All proceedings to which the insolvent insurer is a party or in which it is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver. However, upon application, the court having jurisdiction of the receivership, may lengthen or shorten the period, either as to all claims or as to any particular claim. The association may, at the option of the association, waive such stay as to specific cases involving covered claims.

As to any covered claims based on the default of an insurer who is or who becomes insolvent, or based on the failure of an insurer to defend an insured, the association, on its own behalf or on behalf of the insured, is entitled to set the default aside and defend such claim on its merits.

[C71, 73, 75, 77, 79, 81, § 515B.15]

92 Acts, ch 1162, § 42; 97 Acts, ch 186, §18

### **515B.16 Actions against the association.**

Any action against the association shall be brought against the association in the association's own name. The Polk county district court shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association. Any action against the association shall be commenced within three years after the date of the order of liquidation.

[C73, 75, 77, 79, 81, § 515B.16]

97 Acts, ch 186, §19; 2001 Acts, ch 69, §33; 2003 Acts, ch 91, §43

**515B.17 Timely filing of claims.**

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after twenty-four months from the date of the order of liquidation or after the final date set by the court for the filing of claims against the insolvent insurer or its receiver, whichever occurs first.

[C77, 79, 81, § 515B.17]

93 Acts, ch 88, §23; 2005 Acts, ch 70, §23

**515B.18 Prohibited advertising.**

A person shall not advertise or publish, in connection with the sale of an insurance policy, that claims under the insurance policy are subject to this chapter or will be paid by the Iowa insurance guaranty association.

88 Acts, ch 1112, §509

**515B.19 to 515B.24 Reserved.**

**515B.25 Early access to assets.** Repealed by 97 Acts, ch 186, §27.

**515B.26 Title.**

This chapter shall be known and may be cited as the "*Iowa Insurance Guaranty Association Act*".

[C71, § 515B.16; C73, 75, § 515B.17; C77, 79, 81, § 515B.18]