

January 22, 1970
Passed on File
See Commerce 2-3

SENATE FILE 1102

By COMMITTEE ON COMMERCE
(Committee on Commerce)

Passed Senate, Date *1-30-70* Passed House, Date *2-11-70*
Vote: Ayes *57* Nays *0* Vote: Ayes *110* Nays *0*
Approved *2-20-70*

A BILL FOR *Sub. for H. 7 1168, 2-11*

- 1 An Act to avoid financial loss due to the insolvency of an
- 2 insurer.
- 3 *Be It Enacted by the General Assembly of the State of Iowa:*
- 4 Section 1. **Scope.** This Act shall apply to all kinds of
- 5 direct insurance, except life, title, surety, disability,
- 6 credit, mortgage guaranty, and ocean marine insurance.
- 7 Sec. 2. **Definitions.** As used in this Act unless the con-
- 8 text otherwise requires:
- 9 1. "Association" means the Iowa insurance guaranty associa-
- 10 tion created pursuant to section three (3) of this Act.
- 11 2. "Commissioner" means the commissioner of insurance of
- 12 this state.
- 13 3. "Covered claim" means an unpaid claim, including one for
- 14 unearned premiums, which arises out of and is within the cover-
- 15 age of an insurance policy to which this Act applies issued
- 16 by an insurer, if such insurer becomes an insolvent insurer
- 17 after the effective date of this Act and one of the following
- 18 conditions exists:
- 19 a. The claimant or insured is a resident of this state at
- 20 the time of the insured event.
- 21 b. The property from which the claim arises is permanently
- 22 located in this state.
- 23 Such term does not include any amount due any reinsurer,
- 24 insurer, insurance pool, or underwriting association, as
- 25 subrogation recoveries or otherwise.

1 4. "Insolvent insurer" means an insurer authorized to trans-
2 act insurance in this state, either at the time the policy was
3 issued or when the insured event occurred, which is determined
4 to be insolvent by a court of competent jurisdiction.

5 5. "Member insurer" means any person, except a county
6 mutual, fraternal, or nonprofit service plan, who:

7 a. Writes any kind of insurance to which this Act applies,
8 including the exchange of reciprocal or interinsurance con-
9 tracts.

10 b. Is licensed to transact insurance in this state.

11 6. "Net director written premiums" means direct gross pre-
12 miums written in this state on insurance policies to which
13 this Act applies, less return premiums and dividends paid or
14 credited to policyholders on such direct business. Such term
15 does not include premiums on contracts between insurers or re-
16 insurers.

17 7. "Person" means any individual, corporation, partnership,
18 association, or voluntary organization.

19 **Sec. 3. Creation of the association.** There is created a
20 nonprofit unincorporated legal entity to be known as the Iowa
21 insurance guaranty association. All member insurers as defined
22 in section two (2), subsection five (5) of this Act shall be
23 and remain members of the association as a condition of their
24 authority to transact insurance in this state. The association
25 shall perform its functions under a plan of operation estab-
26 lished and approved pursuant to section six (6) of this Act
27 and shall exercise its powers through a board of directors
28 established under section four (4) of this Act.

29 **Sec. 4. Board of directors.** The board of directors of the
30 association shall consist of not less than five nor more than
31 nine persons serving terms as established in the plan of opera-
32 tion. The members of the board shall be selected by member
33 insurers subject to the approval of the commissioner. Vacan-
34 cies on the board shall be filled for the remaining period of
35 the term in the same manner as initial appointments. If no

1 members are selected within sixty days after the effective
2 date of this Act, the commissioner may appoint the initial
3 members of the board of directors.

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

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

10 **Sec. 5. Duties and powers of the association.**

11 1. The association shall:

12 a. Be obligated to the extent of the covered claims exist-
13 ing prior to the determination of insolvency and arising within
14 thirty days after the determination of insolvency, or before
15 the policy expiration date if less than thirty days after the
16 determination, or before the insured replaces the policy or on
17 request effects cancellation if he does so within thirty days
18 of the determination. Such obligation shall include only that
19 amount of each covered claim which is in excess of one hundred
20 dollars and less than three hundred thousand dollars, except
21 that the association shall pay the full amount of any covered
22 claim arising out of a workmen's compensation policy. In no
23 event shall the association be obligated to a policyholder or
24 claimant in an amount in excess of the face amount of the
25 policy from which the claim arises.

26 b. Be deemed the insurer to the extent of its obligations
27 on the covered claims and to such extent shall have all rights,
28 duties, and obligations of the insolvent insurer as if the in-
29 surer had not become insolvent.

30 c. Assess member insurers amounts necessary to pay the
31 obligations of the association under paragraph a of this sub-
32 section subsequent to an insolvency, the expenses of handling
33 covered claims subsequent to an insolvency, the cost of ex-
34 aminations under section ten (10) of this Act, and other ex-
35 penses authorized by this Act. The assessment of each member

1 insurer shall be in the proportion that the net direct written
2 premiums of the member insurer for the preceding calendar year
3 bear to the net direct written premiums of all member insurers
4 for the preceding calendar year. Each member insurer shall be
5 notified of the assessment not later than thirty days before
6 it is due. No member insurer may be assessed in any year an
7 amount greater than two percent of that member insurer's net
8 direct written premiums for the preceding calendar year. If
9 the maximum assessment, together with the other assets of the
10 association, does not provide in any one year an amount suf-
11 ficient to make all necessary payments, the funds available
12 shall be prorated and the unpaid portion shall be paid as soon
13 as funds become available. The association may exempt or
14 defer, in whole or in part, the assessment of any member in-
15 surer if the assessment would cause the member insurer's fi-
16 nancial statement to reflect amounts of capital or surplus less
17 than the minimum amounts required for a certificate of author-
18 ity by any jurisdiction in which the member insurer is autho-
19 rized to transact insurance. Each member insurer may set off
20 against any assessment, authorized payments made on covered
21 claims and expenses incurred in the payment of such claims by
22 the member insurer.

23 d. Investigate claims brought against the fund and adjust,
24 compromise, settle, and pay covered claims to the extent of
25 the association's obligation and deny all other claims.

26 e. Notify such persons as the commissioner directs under
27 section seven (7), subsection two (2), paragraph a of this Act.

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

33 g. Reimburse each servicing facility for obligations of
34 the association paid by the facility and for expenses incurred
35 by the facility while handling claims on behalf of the associa-

1 tion, and pay the other expenses of the association authorized
2 by this Act.

3 2. The association may:

4 a. Appear in, defend, and appeal any action on a claim
5 brought against the association.

6 b. Employ or retain persons necessary to handle claims and
7 perform other duties of the association.

8 c. Borrow funds necessary to effect the purposes of this
9 Act in accord with the plan of operation.

10 d. Sue or be sued.

11 e. Negotiate and become a party to contracts necessary to
12 carry out the purpose of this Act.

13 f. Perform such other acts necessary or proper to effec-
14 tuate the purposes of this Act.

15 g. If, at the end of any calendar year, the board of di-
16 rectors finds that the assets of the association exceed its
17 liabilities as estimated by the board of directors for the com-
18 ing year, refund to the member insurers in proportion to the
19 contribution of each that amount by which the assets of the as-
20 sociation exceed the liabilities.

21 **Sec. 6. Plan of operation.**

22 1. The association shall submit a plan of operation to the
23 commissioner, together with any amendments necessary or suit-
24 able to assure the fair, reasonable, and equitable administra-
25 tion of the association. The plan of operation and any amend-
26 ments shall become effective upon approval in writing by the
27 commissioner.

28 If the association fails to submit a suitable plan of opera-
29 tion within ninety days following the effective date of this
30 Act or if at any time thereafter the association fails to sub-
31 mit suitable amendments to the plan, the commissioner shall,
32 after notice and opportunity for hearing, adopt and promulgate
33 reasonable rules necessary or advisable to effectuate the pro-
34 visions of this Act. Such rules shall continue in force until
35 modified by the commissioner or superseded by a plan submitted

- 1 by the association and approved by the commissioner.
- 2 2. All member insurers shall comply with the plan of opera-
3 tion.
- 4 3. The plan of operation shall:
- 5 a. Establish the procedures for performance of all the
6 duties and powers of the association under section five (5)
7 of this Act.
- 8 b. Establish procedures for managing assets of the associa-
9 tion.
- 10 c. Establish the amount and method of reimbursing members
11 of the board of directors under section four (4) of this Act.
- 12 d. Establish procedures by which claims may be filed with
13 the association and establish acceptable forms of proof of
14 covered claims. Notice of claims to the receiver or liquidator
15 of the insolvent insurer shall be deemed notice to the associa-
16 tion or its agent and a list of such claims shall be period-
17 ically submitted to the association or similar organization
18 in another state by the receiver or liquidator.
- 19 e. Establish regular places and times for meetings of the
20 board of directors.
- 21 f. Establish procedures for keeping records of all finan-
22 cial transactions of the association, its agents, and the
23 board of directors.
- 24 g. Provide that any member insurer aggrieved by any final
25 action or decision of the association may appeal to the commis-
26 sioner within thirty days after the action or decision.
- 27 h. Establish procedures for submission to the commissioner
28 of selections for the board of directors.
- 29 i. Contain additional provisions necessary or proper for
30 the execution of the duties and powers of the association.
- 31 4. The plan of operation may provide that any or all duties
32 and powers of the association, except those under section five
33 (5), subsection one (1), paragraph c and section five, subse-
34 tion two (2), paragraph c of this Act, are delegated to a per-
35 son which performs or will perform functions similar to those

1 of this association in two or more states. Such person shall
2 be reimbursed as a servicing facility and shall be paid for
3 performance of any other functions of the association. A
4 delegation under this subsection shall take effect only with
5 the approval of both the board of directors and the commis-
6 sioner, and may be made only to a person which extends protec-
7 tion not substantially less favorable and effective than that
8 provided by this Act.

9 **Sec. 7. Duties and powers of the commissioner.**

10 1. The commissioner shall:

11 a. Notify the association of the existence of an insolvent
12 insurer not later than three days after he receives notice of
13 the determination of the insolvency.

14 b. Upon request of the board of directors, provide the as-
15 sociation with a statement of the net direct written premiums
16 of each member insurer.

17 2. The commissioner may:

18 a. Require that the association notify the insureds of the
19 insolvent insurer and any other interested parties of the de-
20 termination of insolvency and of their rights under this Act.
21 Such notification shall be by mail at their last known address,
22 but if sufficient information for notification by mail is not
23 available, notice by publication in a newspaper of general
24 circulation is sufficient.

25 b. Suspend or revoke, after notice and opportunity for
26 hearing, the certificate of authority to transact insurance
27 in this state of any member insurer which fails to pay an as-
28 sessment when due or fails to comply with the plan of opera-
29 tion. As an alternative, the commissioner may levy a fine on
30 any member insurer which fails to pay an assessment when due.
31 Such fine shall not exceed five percent of the unpaid assess-
32 ment per month, except that no fine shall be less than one
33 hundred dollars per month.

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

1 3. Any final action or order of the commissioner under
2 this Act shall be subject to judicial review in a court of
3 competent jurisdiction.

4 **Sec. 8. Effect of paid claims.**

5 1. Any person recovering under this Act shall be deemed
6 to have assigned his rights under the policy to the associa-
7 tion to the extent of his recovery from the association.
8 Every insured or claimant seeking the protection of this Act
9 shall cooperate with the association to the same extent as
10 such person would have been required to cooperate with the
11 insolvent insurer. The association shall have no cause of
12 action against the insured of the insolvent insurer for any
13 sums it has paid out.

14 2. The receiver, liquidator, or statutory successor of an
15 insolvent insurer shall be bound by settlements of covered
16 claims by the association or a similar organization in an-
17 other state. The court having jurisdiction shall grant such
18 claims priority equal to that to which the claimant would have
19 been entitled in the absence of this Act against the assets
20 of the insolvent insurer. The expenses of the association or
21 similar organization in handling claims shall be accorded the
22 same priority as the liquidator's expenses.

23 3. The association shall periodically file with the re-
24 ceiver or liquidator of the insolvent insurer statements of
25 the covered claims paid by the association and estimates of
26 anticipated claims on the association, which statements shall
27 preserve the rights of the association against the assets of
28 the insolvent insurer.

29 **Sec. 9. Nonduplication of recovery.**

30 1. Any person having a claim against his insurer, under
31 any provision in his insurance policy, which is also a covered
32 claim shall be required to exhaust first his right under the
33 policy. Any amount payable on a covered claim under this Act
34 shall be reduced by the amount of recovery under the claimant's
35 insurance policy.

1 2. Any person having a claim which may be recovered under
2 more than one insurance guaranty association or its equivalent
3 shall seek recovery first from the association of the place of
4 residence of the insured. However, if such claim is a first
5 party claim for damage to property with a permanent location
6 recovery shall be first sought from the association of the
7 location of the property; and if such claim is a workmen's
8 compensation claim recovery shall be first sought from the
9 association of the residence of the claimant. Any recovery
10 under this Act shall be reduced by the amount of the recovery
11 from any other insurance guaranty association or its equiv-
12 alent.

13 Sec. 10. **Prevention of insolvencies.** To aid in the detec-
14 tion and prevention of insurer insolvencies:

15 1. The board of directors shall, upon majority vote, notify
16 the commissioner of any information indicating any member in-
17 surer may be insolvent or in a financial condition hazardous
18 to the policyholders or the public.

19 2. The board of directors may, upon majority vote, re-
20 quest that the commissioner order an examination of any mem-
21 ber insurer which the board in good faith believes may be in
22 a financial condition hazardous to the policyholders or the
23 public. Within thirty days of the receipt of such request,
24 the commissioner shall begin such examination. The examina-
25 tion may be conducted as a national association of insurance
26 commissioners' examination or may be conducted by such per-
27 sons as the commissioner designates. The cost of such ex-
28 amination shall be paid by the association and the examina-
29 tion report shall be treated as are other examination reports.
30 In no event shall such examination report be released to the
31 board of directors prior to its release to the public, but
32 this shall not preclude the commissioner from complying with
33 subsection three (3) of this section. The commissioner shall
34 notify the board of directors when the examination is com-
35 pleted. The request for an examination shall be kept on file

1 by the commissioner but it shall not be open to public inspec-
2 tion prior to the release of the examination report to the
3 public.

4 3. The commissioner shall report to the board of directors
5 when he has reasonable cause to believe that any member in-
6 surer examined or being examined at the request of the board
7 of directors may be insolvent or in a financial condition
8 hazardous to the policyholders or the public.

9 4. The board of directors may, upon majority vote, make
10 reports and recommendations to the commissioner upon any mat-
11 ter germane to the solvency, liquidation, rehabilitation, or
12 conservation of any member insurer. Such reports and recom-
13 mendations are not public documents.

14 5. The board of directors may, upon majority vote, make
15 recommendations to the commissioner for the detection and pre-
16 vention of insurer insolvencies.

17 6. The board of directors shall, at the conclusion of any
18 insurer insolvency in which the association was obligated to
19 pay covered claims, prepare a report on the history and causes
20 of such insolvency, based on the information available to the
21 association, and submit such report to the commissioner.

22 **Sec. 11. Examination of the association.** The association
23 is subject to examination and regulation by the commissioner.
24 The board of directors shall submit, not later than March
25 thirtieth of each year, a financial report for the preceding
26 calendar year in a form approved by the commissioner.

27 **Sec. 12. Tax exemption.** The association is exempt from
28 payment of all fees and all taxes levied by this state or any
29 of its subdivisions, except taxes levied on real or personal
30 property.

31 **Sec. 13. Recognition of assessments in rates.** The rates
32 and premiums charged for insurance policies to which this Act
33 applies shall include amounts sufficient to recoup a sum equal
34 to the amounts paid to the association by the member insurer
35 less any amounts returned to the member insurer by the associa-

1 tion, and such rates shall not be deemed excessive as a result
2 of containing such recoupment allowances.

3 Sec. 14. **Immunity.** There is no liability, and no cause
4 of action of any nature shall arise against any member insurer,
5 the association, its agents or employees, the board of direc-
6 tors, the commissioner, or his representatives, for any rea-
7 sonable action taken by them in the performance of their
8 duties and powers under this Act.

9 Sec. 15. **Stay of proceedings.** All proceedings in which
10 the insolvent insurer is a party in any court in this state
11 shall be stayed for sixty days from the date the insolvency
12 is determined to permit proper defense by the association of
13 all pending causes of action.

14 Sec. 16. **Title.** This Act shall be known and may be cited
15 as the Iowa Insurance Guaranty Association Act.

EXPLANATION

This bill will create a mechanism whereby claimants and policyholders of certain insurance policies will have their covered claims paid in the event of an insurer's insolvency. The method by which this protection will be afforded the public is through the establishment of a post loss assessment fund assessed against the other authorized insurers offering the same kind of business in the state.

The bill further provides for methods of early detection and prevention of insurance insolvencies.

- Adopted*
1-30 1 Amend Senate File 1102 as follows:
- 2 1. Page 6, line 33, by inserting after the word "five"
- 3 the figure "(5)".
- 4 2. Page 8, lines 2 and 3, by striking the words "a
- 5 court of competent jurisdiction" and inserting in lieu
- 6 thereof the words "the district court".

Filed - *adopted 1-30*
January 23, 1970

By GRIFFIN