

MAR 5 1976

HOUSE FILE 1483

Place On Calendar

BY COMMITTEE ON COMMERCE

Sen. Commerce 4/7, Pass 4/13

Passed House, Date 4-2-76 (1555) Passed Senate, Date 4-21-76 (1373)
 Vote: Ayes 90 Nays 0 Vote: Ayes 43 Nays 0
 Approved 5-20-76

A BILL FOR

1 An Act relating to the Uniform Guaranty Association Act.
 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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H-5939

1 Amend House File 1483 as follows:
 2 1. Page 1, by inserting after line 14 the fol-
 3 ing new section:
 4 "Sec. ____ . Section five hundred fifteen B point
 5 two (515B.2), subsection four (4), Code 1975, is
 6 amended to read as follows:
 7 4. "Insurer" means an insurer licensed to trans-
 8 act insurance business in this state under either
 9 chapter 515 or chapter 520, either at the time the
 10 policy was issued or when the insured event occur-
 11 red. It shall not include county or state mutual
 12 assessment associations licensed under chapter 518
 13 or chapter 518A, or fraternal beneficiary societies,
 14 orders or associations licensed under chapter 512,
 15 or corporations operating nonprofit service plans un-
 16 der chapter 514, or life insurance companies or life,
 17 accident or health associations licensed under chap-
 18 ter 508 or chapter 510, or those professions under
 19 chapter 519."

H-5939 FILED BY KREAMER of Polk
 MARCH 23, 1976 *Adopted 4/2 (1555)*

1 Section 1. Section five hundred fifteen B point two
2 (515B.2), subsection three (3), unlettered paragraph two (2),
3 Code 1975, is amended by striking the paragraph and inserting
4 in lieu thereof the following:

5 Covered claim shall not include any amount due any
6 reinsurer, insurer, insurance pool or underwriting association,
7 as subrogation recoveries or otherwise nor shall covered claim
8 include any amount due an attorney or adjustor as fees for
9 services rendered to the insolvent insurer. This paragraph
10 shall not prevent any person from filing such excluded claim
11 with the insolvent insurer or its receiver, but such claim
12 shall not be asserted against the insured of the insolvent
13 insurer except to the extent that such claim exceeds the
14 coverage of the policy issued by the insolvent insurer.

15 Sec. 2. Section five hundred fifteen B point five (515B.5),
16 subsection one (1), paragraph c, Code 1975, is amended to
17 read as follows:

18 c. Assess member insurers amounts necessary to pay the
19 obligations of the association under paragraph "a" of this
20 subsection subsequent to an insolvency, the expenses of
21 handling covered claims subsequent to an insolvency, the cost
22 of examinations under section 515B.10, and other expenses
23 authorized by this chapter. The assessment of each member
24 insurer shall be in the proportion that the net direct written
25 premiums of the member insurer for the preceding calendar
26 year bear to the net direct written premiums of all member
27 insurers for the preceding calendar year. Each member insurer
28 shall be notified of the assessment not later than thirty
29 days before it is due. No member insurer may be assessed
30 in any year an amount greater than two percent of that member
31 insurer's net direct written premiums for the preceding
32 calendar year. If the maximum assessment, together with the
33 other assets of the association, does not provide in any one
34 year an amount sufficient to make all necessary payments,
35 the funds available shall be prorated and the unpaid portion

1 shall be paid as soon as funds become available. The
2 association may exempt or defer, in whole or in part, the
3 assessment of any member insurer if the assessment would cause
4 the member insurer's financial statement to reflect amounts
5 of capital or surplus less than the minimum amounts required
6 for a certificate of authority by any jurisdiction in which
7 the member insurer is authorized to transact insurance. Each
8 member insurer serving as a servicing facility pursuant to
9 this section may set off against any assessment, authorized
10 payments made on covered claims and expenses incurred in the
11 payment of such claims by the member insurer.

12 In addition, the association shall have the authority to
13 levy an administrative assessment of not more than fifty dol-
14 lars per year per member insurer on a non pro rata basis,
15 which assessment shall be credited against any future
16 insolvency assessment. Such assessment shall be used to pay
17 authorized expenses not directly attributable to any particular
18 insolvency or insolvent insurer. All overdue and unpaid
19 assessments shall draw interest at the rate of seven percent
20 per annum.

21 Sec. 3. Section five hundred fifteen B point five (515B.5),
22 subsection one (1), paragraph d, Code 1975, is amended to
23 read as follows:

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

28 Sec. 4. Section five hundred fifteen B point five (515B.5),
29 subsection two (2), Code 1975, is amended by striking para-
30 graph g, and inserting in lieu thereof the following:

31 g. If at any time the board of directors finds that the
32 amount assessed for any insolvency exceeds the actual and
33 projected liabilities of that insolvency, it may refund such
34 excess to member insurers in the same proportion that each
35 contributed to the original assessment or assessments. Any

1 assessments or refunds of any member insurer in amounts not
2 to exceed twenty-five dollars may, at the discretion of the
3 board of directors, be waived.

4 Sec. 5. Section five hundred fifteen B point eight
5 (515B.8), subsection two (2), Code 1975, is amended to read
6 as follows:

7 2. The receiver, liquidator, or statutory successor of
8 an insolvent insurer shall be bound by settlements of covered
9 claims by the association or a similar organization in another
10 state. The court having jurisdiction shall grant such claims
11 priority ~~equal to that to which the claimant would have been~~
12 ~~entitled in the absence of this chapter against the assets~~
13 ~~of the insolvent insurer, including the deductible portion~~
14 thereof, against the assets of the insolvent insurer over
15 all other claims not having statutory or secured priority.
16 The expenses of the association or similar organization in
17 handling claims shall be accorded the same priority as the
18 liquidator's expenses.

19 Sec. 6. Section five hundred fifteen B point nine (515B.9),
20 subsection one (1), Code 1975, is amended to read as follows:

21 1. Any person having a claim against his or her insurer,
22 under any provision in his or her insurance policy, which
23 is also a covered claim shall be required to exhaust first
24 his or her right under the policy. ~~Any amount payable on~~
25 ~~a covered claim under this chapter shall be reduced by the~~
26 ~~amount of recovery under the claimant's insurance policy.~~
27 Any amount recovered or recoverable by a person under another
28 insurance policy shall be credited against the policy limits
29 of the policy of the insolvent insurer before computing the
30 amount of any covered claim. For purposes of this section,
31 another insurance policy means a policy issued by any insurance
32 company, whether a member insurer or not, which policy insures
33 against any of the types of risks set forth in section five
34 hundred fifteen point forty-eight (515.48) of the Code, except
35 those types of risks set forth in section five hundred fifteen

1 point forty-eight (515.48), subsection five (5), paragraph
2 a, of the Code, and except those types of risks set forth
3 in chapters five hundred eight (508) and five hundred fourteen
4 (514) of the Code.

5 Sec. 7. Section five hundred fifteen B point sixteen
6 (515B.16), Code 1975, is amended by striking the section and
7 inserting in lieu thereof the following:

8 515B.16 STAY OF PROCEEDINGS. All proceedings to which
9 the insolvent insurer is a party or in which it is obligated
10 to defend a party shall be stayed from the date of the
11 insolvency to and including the date set as the deadline for
12 the filing of claims against the insolvent insurer or its
13 receiver. However, upon application, the court having
14 jurisdiction of the receivership, may lengthen or shorten
15 the period, either as to all claims or as to any particular
16 claim.

17 Sec. 8. Chapter five hundred fifteen B (515B), Code 1975,
18 is amended by adding the following new section:

19 NEW SECTION. TIMELY FILING OF CLAIMS. Notwithstanding
20 any other provision of this chapter, a covered claim shall
21 not include any claim filed with the association after the
22 final date set by the court for the filing of claims against
23 the insolvent insurer or its receiver. However the association
24 may waive the requirement of this section when in its
25 discretion the claim was not timely presented due to
26 circumstances beyond the control of the person having the
27 claim.

28 EXPLANATION

29 Chapter 515B is a uniform act designed by the national
30 association of insurance commissioners. Having had to
31 implement it, it was found to be too cumbersome in some
32 respects to be workable and in some instances created
33 inequities. This bill is an effort to correct these
34 shortcomings. Section one preserves the subrogation right
35 against insurance companies, but protects the individual

1 policyholder against subrogation demand to the extent that
2 the individual thought he or she was insured. Section two
3 makes it clear that a member insurer cannot offset payments
4 to its own policyholders against its required assessments
5 and also gives the association the right to levy administrative
6 assessments against member insurers. Section three clarifies
7 the duty of the association to defend policyholders of an
8 insolvent insurer. Section four attempts to eliminate the
9 confusion that exists as to the appropriate method of refunding
10 overassessments. Section five attempts to give policyholders
11 and claimants a priority over reinsurers and other general
12 business creditors and section six clarifies the present law
13 so that a claimant cannot get a greater recovery through an
14 insolvency proceeding than he or she could, had the insurer
15 not become insolvent. Sections seven and eight give the judge
16 handling the insolvency more discretion in the administration
17 of the insolvency.

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LSB 4211
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AN ACT

RELATING TO THE UNIFORM GUARANTY ASSOCIATION ACT.

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

Section 1. Section five hundred fifteen B point two (515B.2), subsection three (3), unlettered paragraph two (2), Code 1975, is amended by striking the paragraph and inserting in lieu thereof the following:

Covered claim shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise nor shall covered claim include any amount due an attorney or adjustor as fees for services rendered to the insolvent insurer. This paragraph shall not prevent any person from filing such excluded claim with the insolvent insurer or its receiver, but such claim shall not be asserted against the insured of the insolvent insurer except to the extent that such claim exceeds the coverage of the policy issued by the insolvent insurer.

Sec. 2. Section five hundred fifteen B point two (515B.2), subsection four (4), Code 1975, is amended to read as follows:

4. "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 shall not include county or state mutual assessment associations licensed under chapter 518 or chapter 518A, or fraternal beneficiary societies, orders or associations licensed under chapter 512, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident or health associations licensed under chapter 508 or chapter 510, or those professions under chapter 519.

Sec. 3. Section five hundred fifteen B point five (515B.5), subsection one (1), paragraph c, Code 1975, is amended to read as follows:

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.

Sec. 4. Section five hundred fifteen B point five (515B.5), subsection one (1), paragraph d, Code 1975, is amended to read as follows:

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

Sec. 5. Section five hundred fifteen B point five (515B.5), subsection two (2), Code 1975, is amended by striking paragraph g, and inserting in lieu thereof the following:

g. If at any time the board of directors finds that the amount assessed for any insolvency exceeds the actual and projected liabilities of that insolvency, it may refund such excess to member insurers in the same proportion that each contributed to the original assessment or assessments. 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.

Sec. 6. Section five hundred fifteen B point eight (515B.8), subsection two (2), Code 1975, is amended to read as follows:

2. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal-to-that-to-which-the-claimant-would-have-been-entitled-in-the-absence-of-this-chapter-against-the-assets-of-the-insolvent-insurer, including the deductible portion thereof, against the assets of the insolvent insurer over

all other claims not having statutory or secured priority. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

Sec. 7. Section five hundred fifteen B point nine (515B.9), subsection one (1), Code 1975, is amended to read as follows:

1. Any person having a claim against his or her insurer, under any provision in his or her insurance policy, which is also a covered claim shall be required to exhaust first his or her right under the policy. ~~Any amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the claimant's insurance policy.~~ Any amount recovered or recoverable by a person under another insurance policy shall be credited against the policy limits of the policy of the insolvent insurer before computing the amount of any covered claim. For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks set forth in section five hundred fifteen point forty-eight (515.48) of the Code, except those types of risks set forth in section five hundred fifteen point forty-eight (515.48), subsection five (5), paragraph a, of the Code, and except those types of risks set forth in chapters five hundred eight (508) and five hundred fourteen (514) of the Code.

Sec. 8. Section five hundred fifteen B point sixteen (515B.16), Code 1975, is amended by striking the section and inserting in lieu thereof the following:

515B.16 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.

Sec. 9. Chapter five hundred fifteen B (515B), Code 1975, is amended by adding the following new section:

NEW SECTION. TIMELY FILING OF CLAIMS. Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver. However the association may waive the requirement of this section when in its discretion the claim was not timely presented due to circumstances beyond the control of the person having the claim.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 1483, Sixty-sixth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved May 20, 1976

ROBERT D. RAY
Governor