

Senate Study Bill 3195 - Introduced

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

A BILL FOR

1 An Act relating to the Iowa life and health insurance guaranty
2 association regarding coverage, benefits, duties, powers,
3 rights, the operation of the Iowa life and health insurance
4 guaranty association, and the coordination of coverage and
5 benefits with those of similar associations of other states,
6 and to the Iowa insurance guaranty association with respect
7 to covered claims, benefits, limitations, duties, and powers
8 of the Iowa insurance guaranty association, and coordination
9 and cooperation by it with similar associations of other
10 states.

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

1 Section 1. Section 508C.3, subsection 1, paragraph b, Code
2 2009, is amended to read as follows:

3 b. Persons who are owners of the policies or contracts
4 specified in subsection 2, other than unallocated annuity
5 contracts and structured settlement annuities, or are insureds
6 or annuitants under the policies or contracts, and who are
7 either of the following:

8 (1) Residents of this state.

9 (2) Nonresidents of this state if all of the following
10 conditions are met:

11 (a) The state in which the person resides has an association
12 similar to the association created in this chapter.

13 (b) The person is not eligible for coverage by an
14 association described in subparagraph part (a) in any other
15 state due to the fact that the insurer was not licensed in
16 the state at the time specified in that state's guaranty
17 association law.

18 ~~(c) The insurer which issued the policy or contract never~~
19 ~~held a license or certificate of authority in the state in~~
20 ~~which the person resides.~~

21 ~~(d)~~ (c) The insurer is domiciled in this state.

22 Sec. 2. Section 508C.3, subsection 1, Code 2009, is amended
23 by adding the following new paragraphs:

24 NEW PARAGRAPH. c. Persons who are the owners of unallocated
25 annuity contracts if the contracts are issued to or in
26 connection with a specific benefit plan whose plan sponsor has
27 its principal place of business in this state.

28 NEW PARAGRAPH. d. (1) A payee, or the beneficiary of a
29 payee if the payee is deceased, of a structured settlement
30 annuity, if the payee or beneficiary of the structured
31 settlement annuity is either of the following:

32 (a) The payee or beneficiary of the structured settlement
33 annuity is a resident of this state regardless of where the
34 owner of the structured settlement annuity resides.

35 (b) The payee or beneficiary of the structured settlement

1 annuity is not a resident of this state and either of the
2 following conditions is met:

3 (i) The owner of the structured settlement annuity is a
4 resident of this state.

5 (ii) The owner of the structured settlement annuity is
6 not a resident of this state and both of the following are
7 applicable:

8 (A) The insurer that issued the structured settlement
9 annuity is domiciled in this state.

10 (B) The state in which the owner of the structured
11 settlement annuity resides has an association similar to the
12 association created by this chapter.

13 (2) Subparagraph (1), subparagraph division (b) shall
14 not be applicable if either the payee or beneficiary of the
15 payee if the payee is deceased, or the owner of the structured
16 settlement annuity is eligible for coverage by the association
17 of the state in which the payee, beneficiary, or owner resides.

18 e. Coverage under this chapter shall not be provided to any
19 of the following:

20 (1) A person who is a payee, or the beneficiary of a payee
21 if the payee is deceased, of a contract owner who is a resident
22 of this state, if the payee or the beneficiary of the payee is
23 provided any coverage by the association of another state.

24 (2) A person who is covered pursuant to paragraph "c" if
25 that person is provided any coverage by the association of
26 another state.

27 NEW PARAGRAPH. f. Coverage under this chapter shall be
28 provided to a person who is a resident of this state and, only
29 in special circumstances, to a nonresident. In order to avoid
30 duplicate coverage, if a person who would otherwise receive
31 coverage under this chapter is provided coverage under the laws
32 of any other state, that person shall not be provided coverage
33 under this chapter. In determining the application of the
34 provisions of this paragraph in situations where a person could
35 be provided coverage by the association of more than one state,

1 whether as an owner, payee, beneficiary, or assignee, this
2 chapter shall be construed in conjunction with other state laws
3 to result in coverage by the association of only one state.

4 Sec. 3. Section 508C.3, subsection 3, paragraphs a, b, and
5 d, Code 2009, are amended to read as follows:

6 a. Any portion of a policy or contract to the extent that
7 the rate of interest on which it is based or the interest
8 rate, crediting rate, or similar factor determined by use of
9 an index or other external reference stated in the policy or
10 contract and employed in calculating returns or changes in
11 value, averaged over the period of four years prior to the date
12 on which the association becomes obligated with respect to
13 the policy or contract, exceeds a rate of interest determined
14 by subtracting two percentage points from Moody's corporate
15 bond yield average for the same four-year period or over such
16 lesser period if the policy or contract was issued less than
17 four years before the association became obligated; and on or
18 after the date on which the association becomes obligated with
19 respect to the policy or contract, exceeds the rate of interest
20 determined by subtracting three percentage points from Moody's
21 corporate bond yield average as most recently available.

22 b. That portion or part of a policy or contract not
23 guaranteed by the insurer, or under which the risk is borne by
24 the policyholder.

25 d. An unallocated annuity contract issued to an employee
26 benefit plan protected under the federal pension benefit
27 guaranty corporation regardless of whether the federal pension
28 benefit guaranty corporation has yet become liable to make any
29 payments with respect to the benefit plan, or a portion of
30 an unallocated annuity contract which is not issued to or in
31 connection with a specific employee, union, or association of
32 natural persons, or any portion of a financial guarantee.

33 Sec. 4. Section 508C.3, subsection 3, paragraph g, Code
34 2009, is amended by striking the paragraph and inserting in
35 lieu thereof the following:

1 *g.* A charitable gift annuity under chapter 508F.

2 Sec. 5. Section 508C.3, subsection 3, paragraph j, Code
3 2009, is amended to read as follows:

4 *j.* An obligation that does not arise under the express
5 written terms of a covered policy, or contract issued by the
6 insurer to the policy or contract owner including without
7 limitation all of the following:

8 (1) Claims based on marketing materials.

9 (2) Claims based on side letters, riders, or other documents
10 that were issued by the insurer without meeting applicable
11 policy form filing or approval requirements.

12 (3) Misrepresentation of or regarding policy benefits.

13 (4) Extra-contractual claims.

14 (5) Claims for penalties, consequential, or incidental
15 damages.

16 Sec. 6. Section 508C.3, subsection 3, Code 2009, is amended
17 by adding the following new paragraphs:

18 NEW PARAGRAPH. *m.* A policy or contract issued in this state
19 by a member insurer at a time the insurer was not licensed or
20 did not have a certificate of authority to issue the policy or
21 contract in this state.

22 NEW PARAGRAPH. *n.* A portion of a policy or contract
23 issued to a plan or program of an employer, association, or
24 other person to provide life, health, or annuity benefits to
25 employees, members, or others, to the extent that the plan or
26 program is self-funded or uninsured, including but not limited
27 to benefits payable by an employer, association, or other
28 person under any of the following:

29 (1) A multiple employer welfare arrangement as defined in
30 section 3 of the federal Employee Retirement Income Security
31 Act of 1974, 29 U.S.C. § 1002, paragraph 40.

32 (2) A minimum premium group insurance plan.

33 (3) A stop-loss group insurance plan.

34 (4) An administrative services-only contract.

35 NEW PARAGRAPH. *o.* A portion of a policy or contract to the

1 extent that it provides for any of the following:

2 (1) Dividends of experience rating credits.

3 (2) Voting rights.

4 (3) Payment of any fees or allowances to any person,
5 including the policy or contract owner, in connection with
6 service to or administration of the policy or contract.

7 NEW PARAGRAPH. *p.* A portion of a policy or contract to the
8 extent that the assessments authorized by section 508C.9 with
9 respect to the policy or contract are preempted by federal or
10 state law.

11 NEW PARAGRAPH. *q.* A policy or contract providing any
12 hospital, medical, prescription drug, or other health care
13 benefits pursuant to 42 U.S.C. ch. 7, subc. XVIII, Part C
14 or Part D, commonly known as Medicare Part C and D pursuant
15 to Tit. XVIII of the federal Social Security Act, or any
16 regulations issued pursuant thereto.

17 Sec. 7. Section 508C.3, Code 2009, is amended by adding the
18 following new subsection:

19 NEW SUBSECTION. 4. In performing its obligations to
20 provide coverage under this chapter, the association shall not
21 be required to guarantee, assume, reinsure, or perform, or
22 cause to be guaranteed, assumed, reinsured, or performed, the
23 contractual obligations of an insolvent or impaired insurer
24 under a covered policy or contract that do not materially
25 affect the economic values or economic benefits of the covered
26 policy or contract.

27 Sec. 8. Section 508C.5, subsection 4, Code 2009, is amended
28 to read as follows:

29 4. "*Contractual obligation*" means an obligation under a
30 covered policy or contract or a certificate under a group
31 policy or contract, or a portion thereof for which coverage is
32 provided under section 508C.3.

33 Sec. 9. Section 508C.5, Code 2009, is amended by adding the
34 following new subsection:

35 NEW SUBSECTION. 5A. "*Extra-contractual claim*" means,

1 without limitation, a claim relating to bad faith in the
2 payment of claims, punitive or exemplary damages, or attorney
3 fees and costs.

4 Sec. 10. Section 508C.5, subsections 6, 7, and 8, Code 2009,
5 are amended to read as follows:

6 6. "*Impaired insurer*" means a member insurer which, after
7 July 1, 1987, ~~is either of the following:~~

8 ~~a. Deemed by the commissioner to be potentially unable to~~
9 ~~fulfill its contractual obligations but is not an insolvent~~
10 ~~insurer.~~

11 ~~b. Placed~~ but is placed under an order of rehabilitation or
12 conservation by a court of competent jurisdiction.

13 7. "*Insolvent insurer*" means a member insurer which,
14 after July 1, 1987, ~~becomes insolvent and is placed under a~~
15 ~~final~~ an order of liquidation with a finding of insolvency by a
16 court of competent jurisdiction.

17 8. "*Member insurer*" means a person licensed or who holds
18 a certificate of authority to transact in this state any kind
19 of insurance ~~to which this chapter applies~~ for which coverage
20 is provided under section 508C.3, including a person whose
21 license or certificate of authority in this state has been
22 suspended, revoked, not renewed, or voluntarily withdrawn. but
23 not including any of the following:

24 a. An entity which is a licensed company specified in
25 section 508C.3, subsection 3, paragraph "e" or "f".

26 b. A mandatory state pooling plan.

27 c. A mutual assessment company or other person which
28 operates on an assessment basis.

29 d. An insurance exchange.

30 e. An entity which issues a charitable gift annuity under
31 chapter 508F.

32 f. An entity similar to any of the entities enumerated in
33 this subsection.

34 Sec. 11. Section 508C.5, Code 2009, is amended by adding the
35 following new subsections:

1 NEW SUBSECTION. 8A. "*Moody's corporate bond yield average*"
2 means the monthly average corporate bond yields published by
3 Moody's investors service, inc., or any successor thereto.

4 NEW SUBSECTION. 8B. "*Owner*" of a policy of contract,
5 "*policy owner*", or "*contract owner*" means the person who is
6 identified as the legal owner of a policy or contract under
7 the terms of the policy or contract or who is otherwise vested
8 with legal title to the policy or contract through a valid
9 assignment completed in accordance with the terms of the policy
10 or contract and properly recorded as the owner on the books
11 of the insurer. "*Owner*", "*policy owner*", or "*contract owner*"
12 does not include a person with a mere beneficial interest in a
13 policy or contract.

14 Sec. 12. Section 508C.5, subsection 9, Code 2009, is amended
15 to read as follows:

16 9. "*Person*" means an individual, corporation, limited
17 liability company, government or governmental subdivision
18 or agency, business trust, estate, trust, partnership,
19 association, or ~~voluntary organization~~ any other legal entity.

20 Sec. 13. Section 508C.5, subsections 10 and 11, Code 2009,
21 are amended by striking the subsections and inserting in lieu
22 thereof the following:

23 10. "*Premium*" means amounts or consideration, by whatever
24 name called, received on covered policies or contracts less
25 returned premiums, considerations, and deposits and less
26 dividends and experience credits. "*Premium*" does not include
27 amounts for consideration received for policies or contracts or
28 for the portions of policies or contracts for which coverage
29 is not provided under section 508C.3, subsection 3, except
30 that assessable premium shall not be reduced on account of the
31 provisions of section 508C.3, subsection 3, paragraph "a",
32 relating to interest limitations and section 508C.8, subsection
33 8, paragraph "a", subparagraph (2), subparagraph division (a),
34 relating to limitations with respect to one individual, one
35 participant, and one owner. "*Premium*" also does not include any

1 of the following:

2 *a.* Premiums in excess of five million dollars on an
3 unallocated annuity contract not issued under a governmental
4 retirement plan, or its trustee, established under section 401,
5 403(b), or 457 of the United States Internal Revenue Code.

6 *b.* With respect to multiple nongroup policies of life
7 insurance owned by one owner, whether the policy owner is an
8 individual, firm, corporation, or other person, and whether
9 the persons insured are officers, managers, employees, or
10 other persons, premiums in excess of five million dollars with
11 respect to those polices or contracts, regardless of the number
12 of policies or contracts held by the owner.

13 11. "*Resident*" means a person to whom a contractual
14 obligation is owed and who resides in a state on the date of
15 entry of a court order that determines a member insurer is an
16 impaired insurer or a court order that determines a member
17 insurer is an insolvent insurer, whichever occurs first. A
18 person may be a resident of only one state, which in the case of
19 a person other than a natural person shall be the state of that
20 person's principal place of business. A citizen of the United
21 States who is a resident of a foreign country, or is a resident
22 of a United States possession, territory, or protectorate that
23 does not have an association similar to the association created
24 by this chapter, shall be deemed a resident of the state or
25 domicile of the insurer that issued the policy or contract.

26 Sec. 14. Section 508C.5, Code 2009, is amended by adding the
27 following new subsections:

28 NEW SUBSECTION. 11A. "*State*" means a state, the District
29 of Columbia, Puerto Rico, or a United States possession,
30 territory, or protectorate.

31 NEW SUBSECTION. 11B. "*Structured settlement annuity*" means
32 an annuity purchased in order to fund periodic payments for a
33 plaintiff or other claimant in payment for or with respect to
34 personal injuries suffered by the plaintiff or other claimant.

35 Sec. 15. Section 508C.5, subsection 12, Code 2009, is

1 amended to read as follows:

2 12. "*Supplemental contract*" means ~~an~~ a written agreement
3 entered into for the distribution of ~~policy or contract~~
4 proceeds under a life, health, or annuity policy or contract.

5 Sec. 16. Section 508C.8, subsection 1A, Code Supplement
6 2009, is amended by striking the subsection.

7 Sec. 17. Section 508C.8, subsection 2, Code Supplement
8 2009, is amended by striking the subsection and inserting in
9 lieu thereof the following:

10 2. If a member insurer is an insolvent insurer, the
11 association may in its discretion do any of the following:

12 a. The association may do either of the following:

13 (1) Guarantee, assume, or reinsure, or cause to be
14 guaranteed, assumed, or reinsured the covered policies or
15 contracts of an insolvent insurer.

16 (2) Assure payment of the contractual obligations of the
17 insolvent insurer.

18 b. Provide moneys, pledges, notes, guarantees, or other
19 means as reasonably necessary to discharge the duties described
20 in this subsection.

21 c. Provide benefits and coverages in accordance with all of
22 the following provisions:

23 (1) With respect to life and health insurance policies or
24 contracts and annuity contracts, assure payment of benefits
25 for premiums identical to the premiums and benefits, except
26 for conversion and renewability, that would have been payable
27 under the policies or contracts of the insolvent insurer for
28 the following claims incurred as follows:

29 (a) With respect to group policies or contracts, not later
30 than the earlier of the next renewal date under those policies
31 or contracts or forty-five days, but in no event less than
32 thirty days, after the date on which the association becomes
33 obligated with respect to those policies or contracts.

34 (b) With respect to nongroup policies or contracts not later
35 than the earlier of the next renewal date, if any, under those

1 policies or contracts or one year, but in no event less than
2 thirty days, from the date on which the association becomes
3 obligated with respect to the policies or contracts.

4 (2) Make diligent efforts to provide all known insureds
5 or annuitants, for nongroup policies or contracts, or group
6 policy owners, with respect to group policies or contracts,
7 thirty days' notice of the termination of the benefits provided
8 pursuant to subparagraph (1).

9 (3) With respect to nongroup life and health insurance
10 policies or contracts covered by the association, make
11 available to each known insured or annuitant, or owner if
12 other than the insured or annuitant, and with respect to an
13 individual formerly insured or formerly an annuitant under a
14 group policy or contract who is not eligible for replacement
15 group coverage, substitute coverage on an individual basis in
16 accordance with the provisions of subparagraph (4), if the
17 insureds or annuitants had a right under law or under the
18 terminated policy or contract to convert coverage to individual
19 coverage or to continue an individual policy or contract in
20 force until a specified age or for a specified time, during
21 which the insurer had no right to unilaterally make changes in
22 any provision of the policy or contract or had a right only to
23 make changes in premium by class.

24 (4) In providing the substitute coverage required under
25 subparagraph (3), the association may offer either to reissue
26 the terminated coverage or to issue an alternative policy or
27 contract.

28 (a) Reissued or alternative policies or contracts shall be
29 offered without requiring evidence of insurability, and shall
30 not provide for any waiting period or exclusion that would not
31 have applied under the terminated policy or contract.

32 (b) The association may reinsure any reissued or
33 alternative policy or contract.

34 (5) Alternative policies or contracts adopted by the
35 association shall be subject to the approval of the domiciliary

1 insurance commissioner and the receivership court. The
2 association may adopt alternative policies or contracts
3 of various types for future issuance without regard to any
4 particular impairment or insolvency of an insurer.

5 (a) Alternative policies or contracts shall contain
6 at least the minimum statutory provisions required in this
7 state and shall provide benefits that are not unreasonable
8 in relation to the premium charged. The association shall
9 set the premium in accordance with a table of rates that the
10 association shall adopt. The premium shall reflect the amount
11 of insurance to be provided and the age and class of risk of
12 each insured, but shall not reflect any changes in the health
13 of the insured after the original policy or contract was last
14 underwritten.

15 (b) Any alternative policy or contract issued by the
16 association shall provide coverage of a type similar to that
17 of the policy or contract issued by the impaired or insolvent
18 insurer, as determined by the association.

19 (6) If the association elects to reissue terminated
20 coverage at a premium rate different from that charged under
21 the terminated policy or contract the premium shall be set by
22 the association in accordance with the amount of insurance
23 provided and the age and class of risk, subject to approval of
24 the domiciliary insurance commissioner and the receivership
25 court.

26 (7) The association's obligations with respect to coverage
27 under any policy or contract of an impaired or insolvent
28 insurer or under any reissued or alternative policy or
29 contract, shall cease on the date the coverage, or policy or
30 contract, is replaced by another similar policy or contract by
31 the policy or contract owner, or the association.

32 (8) When proceeding under this paragraph "c" with respect
33 to a policy or contract carrying guaranteed minimum interest
34 rates, the association shall assure the payment or crediting of
35 a rate of interest consistent with section 508C.3, subsection

1 3, paragraph "a".

2 Sec. 18. Section 508C.8, subsections 6 and 7, Code
3 Supplement 2009, are amended to read as follows:

4 6. a. The association ~~has~~ shall have standing to appear
5 or intervene before any court or agency in this state with
6 jurisdiction over an impaired or insolvent insurer concerning
7 which the association is or may become obligated under this
8 chapter or with jurisdiction over any person or property
9 against which the association may have rights through
10 subrogation or otherwise. 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,
13 modifying, or guaranteeing the covered policies or contracts of
14 the impaired or insolvent insurer and the determination of the
15 covered policies or contracts, and contractual obligations.
16 The association shall also have the right to appear or
17 intervene before any court or agency in another state with
18 jurisdiction over an impaired or insolvent insurer for which
19 the association is or may become obligated or with jurisdiction
20 over any person or property against whom the association may
21 have rights through subrogation or otherwise.

22 b. As a creditor of an impaired or insolvent insurer as
23 provided under section 508C.13, subsection 3, and consistent
24 with the provisions of section 507C.34, the association and
25 other similar associations shall be entitled to receive a
26 disbursement of assets out of the marshaled assets, from
27 time to time as the assets become available to reimburse
28 the association or similar associations, as a credit
29 against contractual obligations under this chapter. If the
30 liquidator has not, within one hundred twenty days of a final
31 determination of insolvency of an insurer by the receivership
32 court, made an application to the court for the approval of a
33 proposal to disburse assets out of marshaled assets to guaranty
34 associations having obligations because of the insolvency, the
35 association or similar associations shall be entitled to make

1 application to the receivership court for approval of its own
2 proposal to disburse these assets.

3 7. a. A person receiving benefits under this chapter is
4 deemed to have assigned the rights under any causes of action
5 against any person for losses arising under, resulting from,
6 or otherwise relating to the covered policy or contract to the
7 association to the extent of the benefits received under this
8 chapter, whether the benefits are payments of or on account
9 of contractual obligations, or a continuation of coverage, or
10 the provision of substitute or alternative coverages. The
11 association may require an assignment to the association of
12 the rights and causes of action by a any payee, policyholder
13 or contract owner, beneficiary, insured, or annuitant as a
14 condition precedent to the receipt of any rights or benefits
15 conferred by this chapter upon the person. The association
16 shall be subrogated to these rights against the assets of the
17 impaired or insolvent insurer.

18 b. The subrogation rights of the association under this
19 subsection have the same priority against the assets of the
20 impaired or insolvent insurer as that possessed by the person
21 entitled to receive benefits under this chapter.

22 c. In addition to the rights pursuant to subsection
23 3, paragraphs "a" and "b", the association shall have all
24 common law rights of subrogation and any other equitable
25 or legal remedy which would have been available to the
26 impaired or insolvent insurer or holder owner, beneficiary,
27 or payee of a covered policy or contract with respect to
28 the policy or contract, including without limitation, in the
29 case of a structured settlement annuity, any rights of the
30 owner, beneficiary, or payee of the annuity, to the extent of
31 benefits received pursuant to this chapter, against the person
32 originally or by succession responsible for the losses arising
33 from the personal injury relating to the annuity or payment
34 for the annuity, excepting any such person responsible solely
35 by reason of serving as an assignee in respect of a qualified

1 assignment under section 130 of the Internal Revenue Code.

2 d. If the provisions of paragraphs "a" through "c" are
3 invalid or ineffective with respect to any person or claim for
4 any reason, the amount payable by the association with respect
5 to the related covered obligations shall be reduced by the
6 amount realized by any other person with respect to the person
7 or claim that is attributable to the policies or contracts, or
8 portion thereof, covered by the association.

9 e. If the association has provided benefits with respect
10 to a covered obligation and a person recovers amounts as to
11 which the association has rights as described in paragraphs
12 "a" through "d", the person shall pay to the association
13 the portion of the recovery attributable to the policies or
14 contracts, or portion thereof, covered by the association.

15 Sec. 19. Section 508C.8, subsection 8, paragraph a,
16 subparagraph (2), subparagraph division (a), subparagraph
17 subdivisions (i) and (ii), Code Supplement 2009, are amended
18 to read as follows:

19 (i) Three hundred thousand dollars in life insurance death
20 benefits, but not more than one hundred thousand dollars in
21 net cash surrender and net cash withdrawal values for life
22 insurance, ~~or three hundred fifty thousand dollars in the~~
23 ~~aggregate.~~

24 (ii) ~~Three~~ Five hundred thousand dollars for health
25 insurance benefits which are basic hospital expense coverage,
26 basic medical-surgical expense coverage, or major medical
27 expense coverage as defined by the commissioner by rule
28 pursuant to section 514D.4; three hundred thousand dollars
29 for health insurance benefits which are disability income
30 protection as defined by the commissioner by rule pursuant to
31 section 514D.4; three hundred thousand dollars for long-term
32 care insurance as defined in section 514G.103; or one hundred
33 thousand dollars for other health insurance benefits including
34 any net cash surrender and net cash withdrawal values.

35 Sec. 20. Section 508C.8, subsection 8, paragraph a,

1 subparagraph (2), subparagraph division (a), Code Supplement
2 2009, is amended by adding the following new subparagraph
3 subdivision:

4 NEW SUBPARAGRAPH SUBDIVISION. (iv) With respect to each
5 payee of a structured settlement annuity, or the beneficiary
6 or beneficiaries of the payee if the payee is deceased,
7 two hundred fifty thousand dollars in present value annuity
8 benefits, in the aggregate, including net cash surrender and
9 net cash withdrawal values.

10 Sec. 21. Section 508C.8, subsection 8, paragraph a,
11 subparagraph (2), subparagraph division (b), Code Supplement
12 2009, is amended to read as follows:

13 (b) (i) With respect to each individual participating in
14 a benefit plan established under section 401, 403(b), or 457 of
15 the United States Internal Revenue Code, or each unallocated
16 annuity contract account, excluding a plan established under
17 section 401, 403(b), or 457 of the United States Internal
18 Revenue Code, not more than two hundred fifty thousand dollars
19 in the aggregate, in present value annuity benefits, including
20 net cash surrender and net cash withdrawal values for the
21 beneficiaries of the deceased individual.

22 (ii) However, the association shall not in any event be
23 obligated to cover more than an aggregate of three hundred
24 fifty thousand dollars in benefits with respect to any one life
25 under subparagraph division (a) and this subparagraph division
26 (b), except with respect to benefits for basic hospital expense
27 coverage, basic medical-surgical expense coverage, or major
28 medical expense coverage under subparagraph division (a),
29 subparagraph subdivision (ii), in which case the aggregate
30 liability of the association shall not exceed five hundred
31 thousand dollars with respect to any one individual, or more
32 than five million dollars in benefits to one owner of multiple
33 nongroup policies of life insurance regardless of whether the
34 policy owner is an individual, firm, corporation, or other
35 person, and whether the persons insured are officers, managers,

1 employees, or other persons, and regardless of the number of
2 policies and contracts held by the owner.

3 Sec. 22. Section 508C.8, Code Supplement 2009, is amended by
4 adding the following new subsections:

5 NEW SUBSECTION. 11. a. (1) At any time within one
6 hundred eighty days of the date of an order of liquidation, the
7 association may elect to succeed to the rights and obligations
8 of a ceding member insurer that relate to policies or contracts
9 covered, in whole or in part, by the association in each case
10 under any reinsurance contract entered into by the insolvent
11 insurer and its reinsurers, selected by the association. Any
12 such assumption of rights and obligations shall be effective
13 as of the date of the order of liquidation. The election shall
14 be effected by the association or by the national organization
15 of life and health insurance guaranty associations on its
16 behalf by sending written notices, return receipt requested,
17 to the affected reinsurers. As used in this subsection, "*date*
18 *of election*" means the date of the election of the association
19 to succeed to the rights and obligations of the ceding member
20 insurer as provided in this subparagraph.

21 (2) To facilitate the earliest practicable decision about
22 whether to assume any of the contracts of reinsurance of the
23 ceding member insurer, and in order to protect the financial
24 position of the state, the receiver and each reinsurer of the
25 ceding member insurer shall make available upon request to the
26 association, or to the national organization of life and health
27 insurance guaranty associations on its behalf, as soon as
28 possible after commencement of formal delinquency proceedings
29 all of the following:

30 (a) Copies of in-force contracts of reinsurance and all
31 related files and records relevant to the determination of
32 whether such contracts should be assumed.

33 (b) Notices of any defaults under the reinsurance contracts
34 or any known event or condition which with the passage of time
35 could become a default under the reinsurance contract.

1 (3) The following provisions shall apply to reinsurance
2 contracts so assumed by the association:

3 (a) The association shall be responsible for all unpaid
4 premiums due under the reinsurance contracts for periods both
5 before and after the date of the order of liquidation and shall
6 be responsible for the performance of all other obligations
7 to be performed after the date of the order of liquidation,
8 in each case which relate to policies or contracts covered,
9 in whole or in part, by the association. The association
10 may charge policies or contracts covered in part by the
11 association, through reasonable allocation methods, the cost
12 for reinsurance in excess of the obligations of the association
13 and shall provide notice and an accounting of these charges to
14 the liquidator.

15 (b) The association shall be entitled to any amounts payable
16 by the reinsurer under the reinsurance contracts with respect
17 to losses or events that occur in periods after the date of the
18 order of liquidation and that relate to policies or contracts
19 covered, in whole or in part, by the association, provided
20 that, upon receipt of any such amounts, the association shall
21 be obliged to pay to the beneficiary under the policy or
22 contract on account of which the amounts were paid, a portion
23 of the amount equal to the lesser of any of the following:

24 (i) The amount received by the association.

25 (ii) The excess of the amount received by the association
26 over the amount equal to the benefits paid by the association
27 on account of the policy or contract less the retention of the
28 insurer applicable to the loss or event.

29 (c) Within thirty days following the date of election, the
30 association and each reinsurer under reinsurance contracts
31 assumed by the association shall calculate the net balance due
32 to or from the association under each reinsurance contract as
33 of the date of election with respect to policies or contracts
34 covered, in whole or in part, by the association, which
35 calculation shall give full credit to all items paid by either

1 the insurer or its receiver or the reinsurer prior to the date
2 of election. The reinsurer shall pay the receiver any amounts
3 due for losses or events prior to the date of the order of
4 liquidation, subject to any setoff for premiums unpaid for
5 periods prior to the date, and the association or reinsurer
6 shall pay any remaining balance due the other, in each case
7 within five days of the completion of the aforementioned
8 calculation. Any disputes over the amounts due to either the
9 association or the reinsurer shall be resolved by arbitration
10 pursuant to the terms of the affected reinsurance contracts or,
11 if the contract contains no arbitration clause, as otherwise
12 provided by law. If the receiver has received any amounts due
13 the association pursuant to subparagraph division (b), the
14 receiver shall remit the same to the association as promptly
15 as practicable.

16 (d) If the association or receiver, on the association's
17 behalf, within sixty days of the date of election, pays the
18 unpaid premiums due for periods both before and after the date
19 of election that relate to policies or contracts covered, in
20 whole or in part, by the association, the reinsurer shall
21 not be entitled to terminate the reinsurance contracts for
22 failure to pay premiums insofar as the reinsurance contracts
23 relate to policies or contracts covered, in whole or in part,
24 by the association, and shall not be entitled to set off any
25 unpaid amounts due under other policies or contracts, or unpaid
26 amounts due from parties other than the association, against
27 amounts due the association.

28 b. During the period from the date of the order of
29 liquidation, until the date of election or, if the association
30 does not elect to succeed to the rights and obligations
31 of the ceding member insurer as provided in paragraph "a",
32 subparagraph (1), until one hundred eighty days after the date
33 of the order of liquidation all of the following provisions are
34 applicable:

35 (1) The association and the reinsurer shall not have any

1 rights or obligations under reinsurance contracts that the
2 association has the right to assume under paragraph "a", whether
3 for periods prior to or after the date of liquidation.

4 (2) The reinsurer, the receiver, and the association shall,
5 to the extent practicable, provide each other with data and
6 records reasonably requested.

7 (3) Once the association elects to assume a reinsurance
8 contract, the parties' rights and obligations shall be governed
9 by the provisions of paragraph "a".

10 c. If the association does not elect to assume the rights
11 and obligations under a reinsurance contract, the association
12 shall have no rights or obligations in each case for periods
13 both before and after the date of the order of liquidation,
14 with respect to the reinsurance contract.

15 d. When policies or contracts, or covered obligations
16 with respect thereto, are transferred to an assuming
17 insurer, reinsurance on the policies or contracts may also
18 be transferred by the association, in the case of rights and
19 obligations under reinsurance contracts assumed under paragraph
20 "a", subject to the following provisions:

21 (1) Unless the reinsurer and the assuming insurer agree
22 otherwise, the reinsurance contracts transferred shall not
23 cover any new policies or contracts of insurance in addition to
24 those transferred.

25 (2) The obligations described in paragraph "a" shall
26 no longer apply with respect to matters arising after the
27 effective date of the transfer.

28 (3) Notice shall be given in writing, return receipt
29 requested, by the transferring party to the affected reinsurer
30 not less than thirty days prior to the effective date of the
31 transfer.

32 e. This subsection shall supersede the provisions of any
33 state law or of any affected reinsurance contract that provides
34 for or requires any payment of reinsurance proceeds, on account
35 of losses or events that occur in periods after the date of the

1 order of liquidation, to the receiver of the insolvent insurer
2 or any other person. The receiver shall remain entitled to any
3 amounts payable by the reinsurer under the reinsurance contract
4 with respect to losses or events that occur in periods prior
5 to the date of the order of liquidation, subject to applicable
6 setoff provisions.

7 *f.* Except as otherwise provided in this subsection, this
8 subsection shall not be construed to do any of the following:

9 (1) Alter or modify the terms and conditions of any
10 reinsurance contract.

11 (2) Abrogate or limit any rights of any reinsurer to
12 claim that the reinsurer is entitled to rescind a reinsurance
13 contract.

14 (3) Give a policyholder or beneficiary an independent cause
15 of action against a reinsurer that is not otherwise set forth
16 in the reinsurance contract.

17 (4) Limit or affect the association's rights as a creditor
18 of the state against the assets of this state.

19 (5) Apply to reinsurance agreements covering property or
20 casualty risks.

21 NEW SUBSECTION. 12. The board of directors of the
22 association shall have discretion and may exercise reasonable
23 business judgment to determine the means by which the
24 association will provide the benefits of this chapter in an
25 economical and efficient manner.

26 NEW SUBSECTION. 13. Where the association has arranged
27 or offered to provide the benefits of this chapter to a
28 covered person under a plan or arrangement that fulfills the
29 association's obligations under this chapter, the person shall
30 not be entitled to benefits from the association in addition to
31 or other than those provided under the plan or arrangement.

32 NEW SUBSECTION. 14. Venue in a suit against the association
33 arising under this chapter shall be in the district court of
34 Polk county. The association shall not be required to give
35 an appeal bond in an appeal that relates to a cause of action

1 arising under this chapter.

2 NEW SUBSECTION. 15. In carrying out its duties in
3 connection with guaranteeing, assuming, or reinsuring policies
4 or contracts under subsections 2 and 3, the association may,
5 subject to approval of the receivership court, issue substitute
6 coverage for a policy or contract that provides an interest
7 rate, crediting rate, or similar factor determined by the use
8 of an index or other external reference stated in the policy or
9 contract employed in calculating returns or changes in value by
10 issuing an alternative policy or contract in accordance with
11 the following provisions:

12 a. In lieu of the index or other external reference provided
13 for in the original policy or contract the alternative policy
14 or contract provides for one of the following:

15 (1) A fixed interest rate.

16 (2) Payment of dividends with minimum guarantees.

17 (3) A different method for calculating interest or changes
18 in value.

19 b. There is no requirement for evidence of insurability,
20 waiting period, or other exclusion that would not have applied
21 under the replaced policy or contract.

22 c. The alternative policy or contract is substantially
23 similar to the replaced policy or contract in all other
24 material terms.

25 Sec. 23. Section 515B.2, subsection 4, paragraph b,
26 subparagraph (4), Code Supplement 2009, is amended by striking
27 the subparagraph and inserting in lieu thereof the following:

28 (4) That is a fee or other amount relating to goods or
29 services sought by or on behalf of an attorney, adjuster,
30 witness, or other provider of goods or services retained by
31 the insolvent insurer or by an insured prior to the date the
32 insurer was declared insolvent.

33 Sec. 24. Section 515B.2, subsection 4, paragraph b, Code
34 Supplement 2009, is amended by adding the following new
35 subparagraphs:

1 NEW SUBPARAGRAPH. (5A) That is a fee or other amount
2 sought by or on behalf of any attorney, adjuster, witness, or
3 other provider of goods or services retained by the insured or
4 claimant in connection with the assertion of any claim, covered
5 or otherwise, against the association.

6 NEW SUBPARAGRAPH. (5B) That is a claim filed with the
7 association or a liquidator for protection afforded under the
8 insured's policy or contract for incurred but not reported
9 losses or expenses.

10 Sec. 25. Section 515B.2, Code Supplement 2009, is amended by
11 adding the following new subsection:

12 NEW SUBSECTION. 6A. "*Liquidator*" means a receiver as
13 defined in section 507C.2, or a comparable person appointed by
14 the courts of the domiciliary state of a foreign insurer.

15 Sec. 26. Section 515B.5, subsection 1, paragraph a,
16 subparagraph (3), Code 2009, is amended to read as follows:

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

23 Sec. 27. Section 515B.14, Code 2009, is amended to read as
24 follows:

25 **515B.14 Immunity.**

26 There ~~is~~ shall be no liability on the part of, and no cause
27 of action of any nature shall arise against any a member
28 insurer, the association, or its agents or employees, the
29 board of directors or any person serving as an alternate
30 or substitute representative of any director, or the
31 commissioner, or the commissioner's representatives, for any
32 ~~reasonable~~ action taken or any failure to act by them in the
33 performance of their duties and powers under this chapter.

34 Sec. 28. NEW SECTION. 515B.19 **Coordination among guaranty**
35 **associations.**

1 1. The association may join one or more organizations
2 of other state associations of similar purpose, to further
3 the purposes and administer the powers and duties of the
4 association. The association may designate one or more of
5 these organizations to act as a liaison for the association
6 and, to the extent the association authorizes, to bind the
7 association in agreements or settlements with receivers
8 of insolvent insurance companies or their designated
9 representatives.

10 2. The association, in cooperation with other obligated
11 or potentially obligated guaranty associations or their
12 designated representatives, shall make all reasonable efforts
13 to coordinate and cooperate with receivers or their designated
14 representatives, in the most efficient and uniform manner,
15 including the use of uniform data standards as promulgated
16 or approved by the national association of insurance
17 commissioners.

18 EXPLANATION

19 This bill relates to the Iowa life and health insurance
20 guaranty association and to the Iowa insurance guaranty
21 association.

22 IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION. The
23 bill amends various provisions in the Iowa life and health
24 insurance guaranty association Act codified in Code chapter
25 508C to protect certain specified persons against failure in
26 the performance of contractual limitations under life and
27 health insurance policies or contracts.

28 Code section 508C.3(1), which specifies who is entitled to
29 receive benefits from the guaranty association, is amended to
30 further define and specify additional classes of persons who
31 are eligible to receive such benefits. This Code section is
32 also amended to provide that such coverage is for residents and
33 only in special circumstances, for nonresidents.

34 Code section 508C.3(3), which specifies items to which
35 the coverage benefits of the association are not available,

1 is amended to further define and add items to which the Code
2 chapter does not apply.

3 New Code section 508C.3(4) specifies that in performing its
4 obligations, the association is not required to guarantee,
5 assume, reinsure, or perform contractual duties of an insolvent
6 or impaired insurer that do not materially affect the economic
7 values or benefits of a covered policy or contract.

8 Code section 508C.5, which provides definitions for terms
9 used in the chapter, is amended by modifying definitions of
10 "contractual obligation", "impaired insurer", "insolvent
11 insurer", "member insurer", "person", and "supplemental
12 contract"; striking and rewriting definitions of "premium" and
13 "resident"; and adding new definitions for "extra-contractual
14 claim", "Moody's corporate bond yield average", "owner",
15 "state", and "structured settlement annuity".

16 Code section 508C.8, concerning the powers and duties of
17 the guaranty association is amended by striking existing
18 subsections (1A) and (2) and inserting a rewritten subsection
19 (2) detailing the power of the association to exercise its
20 discretion to provide coverage and benefits to persons injured
21 by insolvent member insurers.

22 Code section 508C.8(6) is amended to allow the association
23 to appear and intervene in proceedings involving impaired or
24 insolvent insurers before any court or agency in this or other
25 states when the association may become obligated under this
26 Code chapter, or have rights through subrogation or otherwise.

27 Code section 508C.8(7) is amended to provide that a person
28 receiving benefits from the guaranty association is deemed to
29 have assigned its policy or contract rights under any cause of
30 action to the extent of the benefits received, including the
31 provision of substitute or alternative coverages, and to detail
32 the association's subrogation and other rights in the case of
33 a structured settlement annuity against the person originally
34 responsible for losses resulting from the personal injury to
35 which the annuity relates.

1 Code section 508C.8(8)(a)(2) is amended to remove a
2 limitation that capped aggregate life insurance benefits for
3 one life at \$350,000, and to raise the benefit limit for
4 certain specified health insurance benefits from \$300,000 to
5 \$500,000.

6 Code section 508C.8(8)(a)(2) is also amended to add a
7 benefit limit of \$250,000 in present value annuity benefits
8 for each payee of a structured settlement annuity and to
9 provide that with respect to specified individual benefit plans
10 established under federal law the association's obligation
11 is limited to \$300,000 instead of \$350,000 in the aggregate,
12 except as to specified health insurance benefits where the
13 benefits are limited to \$500,000 as to any one individual.

14 New Code section 508C.8(11) allows the association to elect
15 to succeed to the rights and obligations of a ceding member
16 insurer, specifies how the receiver and each reinsurer of the
17 ceding member insurer shall facilitate the decision of the
18 association to assume reinsurance contracts of the ceding
19 insurer by providing information as requested, and details the
20 rights and responsibilities of the association as to assumed
21 reinsurance contracts. The provision also specifies the rights
22 and responsibilities of the association and the reinsurer
23 before the association elects to assume the reinsurance
24 contracts, if the association does not assume the reinsurance
25 contracts or if the obligations are transferred to an assuming
26 reinsurer. The provisions supersede state laws and affected
27 reinsurance contracts that provide for payments of losses or
28 events occurring after the date of the order of liquidation.
29 The provision also specifies that the new provisions shall not
30 be construed to abrogate specified terms, rights, and causes
31 of action or apply to reinsurance agreements covering property
32 or casualty risks.

33 New Code section 508C.8(12) allows the board of directors of
34 the association to exercise discretion and reasonable business
35 judgment in carrying out the provisions of the Code chapter.

1 New Code section 508C.8(13) provides that a person
2 who receives or has been offered benefits under a plan or
3 arrangement that satisfies the association's obligations under
4 this Code chapter is not entitled to other benefits from the
5 association.

6 New Code section 508C.8(14) provides that venue in a suit
7 against the association arising under this Code chapter is in
8 Polk county district court.

9 New Code section 508C.8(15) provides that the association
10 may issue substitute coverage as detailed, with approval of the
11 receivership court, under specified circumstances.

12 INSURANCE GUARANTY ASSOCIATION. The bill also amends
13 various provisions in Code chapter 515B, which establishes the
14 Iowa insurance guaranty association to cover claims against an
15 insolvent insurer who provides direct insurance written under
16 Code chapter 515 (insurance other than life) or Code chapter
17 520 (reciprocal or interinsurance).

18 Code section 515B.2, which provides definitions for the
19 Code chapter, is amended to modify the definition of "covered
20 claim" by adding items that are not covered claims under the
21 Code chapter. Code section 515B.2 is also amended to add a
22 definition for "liquidator".

23 Code section 515B.5, regarding the duties and powers of the
24 association, is amended to raise the limit for covered claims
25 to the lesser of the policy limits or \$500,000 per claim,
26 instead of \$300,000 per claim.

27 Code section 515B.14, concerning immunity of persons
28 involved with the association, is amended to expand that
29 immunity to persons serving as alternates or substitutes for
30 board members and to include immunity for failure to act as
31 well as for actions taken.

32 New Code section 515B.19 allows the association to join with
33 other organizations of state associations of similar purpose
34 to further the association's purposes and administration of
35 its powers and duties and to designate another organization to

S.F. _____ H.F. _____

1 act as a liaison and to bind the association in agreements or
2 settlements with receivers of insolvent insurance companies.
3 The provision also requires the association to make all
4 reasonable efforts to coordinate and cooperate with such
5 receivers including the use of uniform data standards.