

House Study Bill 165 - Introduced

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

A BILL FOR

1 An Act relating to private flood insurance, making penalties
2 applicable, and including applicability and future repeal
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 515J.1 Title.

2 This chapter shall be known and may be cited as the "Iowa
3 *Private Flood Insurance Act*".

4 Sec. 2. NEW SECTION. 515J.2 Purpose.

5 The purpose of this chapter is to foster innovation in
6 private flood insurance, allow insurers to test private flood
7 insurance products in the market, and to provide consumers with
8 more flood insurance options.

9 Sec. 3. NEW SECTION. 515J.3 Definitions.

10 For purposes of this chapter, unless the context otherwise
11 requires:

12 1. "*Advisory organization*" means an organization that
13 develops and files advisory loss costs and standard policy
14 forms, and provides other services for property liability
15 insurers, regulators, and others.

16 2. "*Commissioner*" means the commissioner of insurance.

17 3. "*Eligible surplus lines insurer*" means the same as
18 defined in section 515I.2.

19 4. "*Flood*" means a general and temporary condition of
20 partial or complete inundation of two or more acres of normally
21 dry land area, or of two or more properties, at least one of
22 which is the policyholder's property, caused by any of the
23 following:

24 a. The overflow of inland, tidal, or boundary waters.

25 b. The unusual and rapid accumulation or runoff of surface
26 waters from any source.

27 c. Mudflow.

28 d. Collapse or subsidence of land along the shore of a
29 lake, river, or similar body of water as a result of erosion
30 or undermining caused by waves or currents of water exceeding
31 anticipated cyclical levels.

32 5. "*Flood insurance rate map*" means the official map of a
33 community on which the federal emergency management agency
34 has delineated the special flood hazard areas, the base flood
35 elevations, and the risk premium zones applicable to the

1 community.

2 6. "*Forms*" means policies, applications, and amendments to
3 policies or applications, used in connection with the sale of
4 private flood insurance under this chapter.

5 7. "*Insurance producer*" means the same as defined in section
6 522B.1.

7 8. "*Insurer*" means any person authorized by the commissioner
8 to engage in the business of insurance in this state.

9 9. "*Mudflow*" means a river of liquid and flowing mud on the
10 surfaces of normally dry land areas, as when earth is carried
11 by a current of water. "*Mudflow*" shall not include other earth
12 movements such as landslide, slope failure, or a saturated soil
13 mass moving by liquidity down a slope.

14 10. "*National flood insurance program*" means the program
15 authorized under the National Flood Insurance Act of 1968, as
16 amended, Pub. L. No. 90-48, 42 U.S.C. §4001 et seq.

17 11. "*Non-standard flood insurance*" means a private flood
18 insurance policy that does not meet the definition of "*standard*
19 *flood insurance*" as defined in this section.

20 12. "*Policy*" means an insurance policy, an insurance
21 contract, or an insurance endorsement.

22 13. "*Policyholder*" means a person who is identified as
23 the legal owner of an insurance policy under the terms of the
24 policy, or who is otherwise vested with legal title to the
25 policy through a valid assignment completed in accordance
26 with the terms of the policy and is properly recorded as the
27 legal owner of the policy in the records of the insurer.

28 "*Policyholder*" does not include a person who has a mere
29 beneficial interest in an insurance policy.

30 14. "*Private flood insurance*" means a personal lines policy
31 or a commercial policy issued by an insurer to provide coverage
32 to the policyholder for the peril of flood.

33 15. "*Special flood hazard area*" means an area having special
34 flood, mudflow, or flood-related erosion hazards as shown on a
35 flood insurance rate map.

1 16. "*Standard flood insurance*" means a private flood
2 insurance policy that provides coverage that is at least
3 equivalent to the coverage provided under a standard flood
4 insurance policy issued under the national flood insurance
5 program for the same type of property, including when
6 considering deductibles, exclusions, and conditions offered by
7 the insurer.

8 Sec. 4. NEW SECTION. 515J.4 **Standard flood insurance.**

9 Standard flood insurance written by an insurer must meet all
10 of the following requirements:

11 1. The policy must contain a provision that advises the
12 policyholder of the availability of flood insurance coverage
13 under the national flood insurance program.

14 2. The policy must contain a mortgage interest clause
15 substantially similar to the mortgage interest clause in a
16 standard flood insurance policy issued under the national flood
17 insurance program.

18 3. The policy must contain a provision that allows the
19 policyholder to file suit not later than one calendar year
20 after the date of a written denial of all or part of a claim
21 made by the policyholder under the policy. The provision must
22 state that if the policyholder files a complaint with the
23 division prior to one calendar year after the date of a written
24 denial of all or part of a claim, the one calendar year in which
25 the policyholder may file suit shall commence on the first day
26 following the date on which the division closes the complaint.

27 4. The policy must contain cancellation provisions that are
28 as restrictive as the cancellation provisions in a standard
29 flood insurance policy issued under the national flood
30 insurance program.

31 5. All deductibles and policy limits must be prominently
32 displayed in a minimum ten point type on the policy
33 declarations page, or on the face page of the policy.

34 Sec. 5. NEW SECTION. 515J.5 **Non-standard flood insurance.**

35 An insurer may issue non-standard flood insurance that:

1 1. Provides supplemental flood insurance to a standard
2 flood insurance policy issued under the national flood
3 insurance program, or to standard flood insurance issued
4 pursuant to section 515J.4.

5 2. Defines "flood" more broadly than the term is defined in
6 section 515J.3.

7 3. Does not meet the requirements for discretionary
8 acceptance under 12 C.F.R. §208.25(c)(3)(iii)(A-D).

9 **Sec. 6. NEW SECTION. 515J.6 Rate filings.**

10 An admitted insurer that writes private flood insurance
11 pursuant to this chapter shall establish and file rates in
12 compliance with all applicable provisions of section 515F.5.

13 **Sec. 7. NEW SECTION. 515J.7 Form filings — prior approval.**

14 1. An admitted insurer that writes private flood insurance
15 pursuant to this chapter shall file with the commissioner a
16 copy of all forms at least thirty calendar days prior to the
17 effective date of each form. Private flood insurance shall not
18 be issued or delivered to any person in this state until all
19 forms have been approved by the commissioner.

20 2. The commissioner may at any time review an insurer's
21 forms, records of an insurer pertinent to the forms, and
22 relevant market conditions. The commissioner may disapprove
23 a form at any time and shall notify the insurer of the
24 disapproval. The commissioner may require an insurer to
25 provide, at the insurer's expense, all information deemed
26 necessary by the commissioner to review a form. Within
27 sixty calendar days of notification by the commissioner of
28 disapproval of a form, the insurer shall file all information
29 with the commissioner that establishes that the form is in
30 compliance with this chapter and other applicable laws. The
31 insurer shall bear the burden of proving by a preponderance of
32 the evidence that a form complies with this chapter and other
33 applicable laws. Pursuant to section 515.152, an insurer may
34 appeal a final determination of the commissioner.

35 3. An advisory organization may file forms, in compliance

1 with subsection 1, on behalf of an insurer. If upon
2 preliminary review, the commissioner finds that a form does
3 not comply with this chapter or other applicable laws, the
4 commissioner shall disapprove the form and notify the advisory
5 organization that filed the form. Within sixty calendar
6 days of notification by the commissioner of disapproval of a
7 form, the advisory organization shall file all information
8 with the commissioner that establishes that the form is
9 in compliance with this chapter and other applicable laws.
10 The advisory organization shall bear the burden of proving
11 by a preponderance of the evidence that a form complies
12 with this chapter and other applicable laws. Pursuant to
13 section 515.152, an advisory organization may appeal a final
14 determination of the commissioner.

15 4. All form filings shall be confidential until the
16 effective date of the form. After the effective date of a
17 form, the form shall be posted on the division's internet site
18 and available to the public.

19 Sec. 8. NEW SECTION. 515J.8 **Continuity of coverage —**
20 **notification to applicants.**

21 1. An insurance producer shall provide a written notice
22 to an applicant for private flood insurance whose property is
23 located in a special flood hazard area and is covered by flood
24 insurance issued under the national flood insurance program
25 before the insurance producer places private flood insurance
26 with an insurer or with an eligible surplus lines insurer for
27 the applicant's property. The notice must advise the applicant
28 that if the applicant discontinues flood insurance under the
29 national flood insurance program, and later wants to reinstate
30 coverage under the program, the applicant may be charged the
31 full-risk rate and no longer qualify for a subsidized rate
32 under the national flood insurance program.

33 2. An insurance producer, and an insurer or an eligible
34 surplus lines insurer with whom the insurance producer places
35 private flood insurance, shall retain a copy of the notice

1 under subsection 1 for a minimum of five years.

2 Sec. 9. NEW SECTION. 515J.9 Surplus lines — private flood
3 insurance.

4 If after conducting a diligent search a surplus lines
5 producer confirms that the full amount of private flood
6 insurance, or a specific type of private flood insurance,
7 cannot be obtained from an insurer, the surplus lines producer
8 may place a policy providing flood coverage with an eligible
9 surplus lines insurer. The surplus lines producer and the
10 eligible surplus lines insurer must each comply with the
11 applicable provisions of chapter 515I.

12 Sec. 10. NEW SECTION. 515J.10 Policy certification.

13 1. An insurer that writes private flood insurance under
14 this chapter may certify that private flood insurance issued
15 by the insurer meets or exceeds flood coverage provided under
16 the national flood insurance program by including the following
17 language on a declarations page or other policy documentation
18 provided to a policyholder:

19 This policy meets the definition of "*private flood insurance*"
20 contained in 42 U.S.C. §4012a(b)(7) and the corresponding
21 regulations.

22 2. An insurer may reference a certification pursuant to
23 subsection 1 in marketing materials, or in communications with
24 insurance producers, lending institutions, policyholders, or
25 prospective policyholders.

26 Sec. 11. NEW SECTION. 515J.11 Notice of renewal.

27 1. If an insurer offers to renew private flood insurance
28 that has a term of one year or less, the insurer shall provide
29 the policyholder with a notice that states the renewal terms,
30 the renewal premium, and the renewal premium due date at least
31 forty-five calendar days before the expiration date of the
32 private flood insurance.

33 2. If an insurer offers to renew private flood insurance
34 that has a term of more than one year, or an indefinite term,
35 the insurer shall provide the policyholder with a notice that

1 states the renewal terms, the renewal premium, and the renewal
2 premium due date at least forty-five calendar days before the
3 anniversary date of the private flood insurance.

4 3. If notice is required pursuant to subsection 1 or 2, the
5 notice must be in writing and shall be sent to the policyholder
6 or to the broker of record at the policyholder's or broker's
7 last known mailing address or electronic mail address on file
8 with the insurer. All notices and documents that are delivered
9 by electronic means shall comply with the applicable provisions
10 of chapter 505B.

11 4. If an insurer fails to comply with the forty-five
12 calendar day notice requirement under subsection 1 or 2, a
13 policyholder or a broker of record may elect, within forty-five
14 calendar days following the receipt of notice, to cancel the
15 renewal policy. Earned premium for any period of coverage
16 during the forty-five calendar day period shall be calculated
17 pro rata based upon the premium applicable to the original
18 private flood insurance policy

19 **Sec. 12. NEW SECTION. 515J.12 Cancellation or nonrenewal.**

20 1. Standard flood insurance shall only be canceled by an
21 insurer pursuant to the cancellation provisions in section
22 515J.4, subsection 4.

23 2. Written notice of cancellation or nonrenewal of private
24 flood insurance, other than standard flood insurance, shall
25 be given by the insurer a minimum of forty-five calendar days
26 before the date of cancellation or nonrenewal, and shall be
27 given to each of the following:

28 a. The policyholder.

29 b. The federally insured institution that made the
30 designated loan secured by the property covered by the private
31 flood insurance, or to the servicer acting on the federally
32 insured institution's behalf.

33 3. A notice under subsection 2 must:

34 a. State the date that the private flood insurance is
35 canceled or not renewed, and the date shall be no sooner

1 than forty-five calendar days from the date of the notice of
2 cancellation or nonrenewal.

3 *b.* Advise the policyholder of the policyholder's right
4 to request that the division review the cancellation or
5 nonrenewal.

6 *c.* Be filed with the commissioner subject to the use and
7 file requirements.

8 *d.* Be in writing and shall be sent to the policyholder and
9 to the federally insured institution at the policyholder's and
10 the federally insured institution's last known mailing address
11 or electronic mail address on file with the insurer. All
12 notices and documents that are delivered by electronic means
13 shall comply with the applicable provisions of chapter 505B.

14 **Sec. 13. NEW SECTION. 515J.13 Unfair acts and deceptive**
15 **practices.**

16 An insurer or an insurance producer that knowingly does any
17 of the following commits an unfair or deceptive act or practice
18 pursuant to section 507B.4, subsection 3, and shall be subject
19 to orders and penalties under chapter 507B:

20 1. Misrepresents a private flood insurance policy as
21 certified pursuant to section 515J.10, subsection 1.

22 2. Misrepresents the scope of coverage of private flood
23 insurance in marketing materials or an advertisement, or
24 in any communication with an insurance producer, a lending
25 institution, a policyholder, or a prospective policyholder.

26 **Sec. 14. NEW SECTION. 515J.14 Writing private flood**
27 **insurance — miscellaneous requirements.**

28 1. At least thirty calendar days prior to writing private
29 flood insurance, an admitted insurer shall, pursuant to rules
30 adopted by the commissioner:

31 *a.* Notify the commissioner of the insurer's intent to write
32 private flood insurance.

33 *b.* File a plan of operation and financial projections, or
34 revisions to a plan of operation and financial projections,
35 with the commissioner.

1 2. An insurer writing private flood insurance shall comply
2 with all applicable requirements of Title XIII, subtitle 1.

3 3. An insurer writing private flood insurance is subject to
4 examination pursuant to chapter 507.

5 4. An insurer writing private flood insurance shall
6 notify the commissioner, pursuant to rules adopted by the
7 commissioner, within forty-five calendar days of exiting the
8 private flood insurance market.

9 Sec. 15. NEW SECTION. 515J.15 **Nondiscrimination.**

10 1. An insurer shall not refuse to issue private flood
11 insurance, cancel private flood insurance, or refuse to
12 renew private flood insurance based on an applicant's or a
13 policyholder's status related to any of the following:

- 14 a. Age.
- 15 b. Sex.
- 16 c. Race.
- 17 d. Color.
- 18 e. Religion.
- 19 f. National origin.
- 20 g. Marital status.
- 21 h. Income level.
- 22 i. Occupation.
- 23 j. Military status.
- 24 k. Creed.

25 2. This section shall not prohibit an insurer from limiting
26 the issuance of private flood insurance under this chapter
27 to individuals who have engaged in, or are engaged in, a
28 particular profession or occupation.

29 3. An insurer may refuse to issue or to renew private flood
30 insurance based on a property's exposure to flood.

31 Sec. 16. NEW SECTION. 515J.16 **Rules.**

32 The commissioner may adopt rules pursuant to chapter 17A as
33 necessary to administer this chapter.

34 Sec. 17. **FUTURE REPEAL.** Section 515J.8, subsection 1, is
35 repealed effective thirty calendar days after enactment of

1 federal legislation mandating that for purposes of applying
2 any statutory, regulatory, or administrative continuous
3 coverage requirement, including under 42 U.S.C. §4014(g), the
4 administrator of the federal emergency management agency shall
5 consider any period during which a property was continuously
6 covered by flood insurance, either through the national flood
7 insurance program or the private market, that was used to
8 satisfy the requirements under 42 U.S.C. §4012a(a) to be a
9 period of continuous coverage. The commissioner of insurance
10 shall notify the Iowa Code editor upon the occurrence of this
11 condition.

12 Sec. 18. APPLICABILITY.

13 1. This Act applies sixty calendar days after the date
14 of enactment to private flood insurance initially delivered,
15 issued for delivery, continued, or renewed in this state on or
16 after the date of enactment.

17 2. This Act applies one hundred eighty calendar days after
18 the date of enactment to private flood insurance that has been
19 initially delivered, issued for delivery, continued, or renewed
20 in this state prior to the date of enactment.

21 EXPLANATION

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill establishes the "Iowa Private Flood Insurance Act"
25 to foster innovation in private flood insurance, allow insurers
26 to test private flood insurance products in the market, and to
27 provide consumers with more flood insurance options.

28 "Private flood insurance" is defined in the bill as a
29 personal lines or commercial policy issued by an insurer to
30 provide coverage to the policyholder for the peril of flood.
31 "Flood" is also defined in the bill.

32 The bill permits insurers to write standard flood insurance
33 if the policy advises the policyholder of the availability of
34 flood insurance coverage under the national flood insurance
35 program (NFIP), it contains a mortgage interest clause

1 substantially similar to the mortgage interest clause in a
2 standard flood insurance policy (SFIP) issued under the NFIP,
3 it advises the policyholder of the process for filing suit
4 over a denied claim, it contains cancellation provisions as
5 restrictive as the cancellation provisions in an SFIP issued
6 under the NFIP, and all deductibles and policy limits are
7 prominently displayed on the policy declarations page or the
8 face page of the policy. "Standard flood insurance policy" is
9 defined in the bill as a private flood insurance policy that
10 provides coverage that is at least equivalent to the coverage
11 provided under a standard flood insurance policy issued under
12 the national flood insurance program for the same type of
13 property, including when considering deductibles, exclusions,
14 and conditions offered by the insurer.

15 The bill also permits insurers to issue non-standard flood
16 insurance that provides supplemental flood insurance to an SFIP
17 issued under the NFIP or to standard flood insurance issued by
18 an insurer under the bill; or that defines "flood" more broadly
19 than the term is defined in the bill; or that does not meet
20 the requirements for discretionary acceptance under 12 C.F.R.
21 §208.25(c)(3)(iii)(A-D).

22 An admitted insurer that writes private flood insurance must
23 establish and file rates in compliance with all applicable
24 provisions of Code chapter 515F and, as detailed in the bill,
25 receive prior approval from the commissioner of insurance
26 (commissioner) on form filings.

27 An insurance producer must provide a written notice to
28 an applicant for private flood insurance whose property is
29 located in a special flood hazard area and is covered by flood
30 insurance under the NFIP before the producer places private
31 flood insurance with an insurer or an eligible surplus lines
32 insurer for the applicant's property. "Special flood hazard
33 area" is defined in the bill. The notice must advise the
34 applicant that if the applicant discontinues flood coverage
35 under the NFIP and later wants to reinstate coverage, the

1 applicant may be charged the full-risk rate and no longer
2 qualify for a subsidized rate under the NFIP. Under the bill,
3 this requirement is repealed effective 30 calendar days after
4 enactment of federal legislation mandating that for purposes
5 of applying any statutory, regulatory, or administrative
6 continuous coverage requirement, including under 42 U.S.C.
7 §4014(g), the administrator of the federal emergency management
8 agency must consider any period during which a property was
9 continuously covered by flood insurance, either through the
10 NFIP or the private market, that was used to satisfy the
11 requirements under 42 U.S.C. §4012a(a) to be a period of
12 continuous coverage. The commissioner is required to notify
13 the Iowa Code editor upon the occurrence of this condition.

14 The bill permits a surplus lines producer, after conducting
15 a diligent search that confirms that the full amount of private
16 flood insurance, or a specific type of private flood insurance,
17 cannot be obtained from an insurer, to place a policy providing
18 flood coverage with an eligible surplus lines insurer. The
19 bill requires the surplus lines producer and the eligible
20 surplus lines insurer to comply with the applicable provisions
21 of Code chapter 515I.

22 An insurer that writes private flood insurance may certify
23 that a policy issued by the insurer meets or exceeds flood
24 coverage provided under the NFIP by including language as
25 specified in the bill on a declarations page or other policy
26 documentation provided to a policyholder. The insurer may
27 reference the certification in marketing materials, and
28 communications with insurance producers, lending institutions,
29 policyholders, and prospective policyholders.

30 The requirements for renewal, nonrenewal, and cancellation
31 of private flood insurance are detailed in the bill.

32 An insurer or an insurance producer that knowingly
33 misrepresents a policy as being certified, or misrepresents
34 the scope of coverage of private flood insurance in marketing
35 materials, advertisements, or in a communication with an

1 insurance producer, a lending institution, a policyholder, or
2 a prospective policyholder commits an unfair or deceptive act
3 or practice, and is subject to orders and penalties under Code
4 chapter 507B.

5 The bill requires that an admitted insurer, at least 30
6 days prior to writing private flood insurance, notifies the
7 commissioner and files a plan of operation and financial
8 projections. An insurer must also notify the commissioner
9 within 45 days of exiting the private flood insurance market.
10 An insurer that writes private flood insurance must comply with
11 all applicable requirements of Code Title XIII, subtitle 1, and
12 is subject to examination pursuant to Code chapter 507.

13 The bill prohibits an insurer from refusing to issue or
14 renew private flood insurance, or from canceling private
15 flood insurance, based on an applicant's or a policyholder's
16 age, sex, race, color, religion, national origin, marital
17 status, income level, occupation, military status, or creed.
18 An insurer may, however, limit the issuance of private flood
19 insurance to individuals who have engaged in, or are engaged
20 in, a particular profession or occupation, and may refuse to
21 issue or renew private flood insurance due to a property's
22 exposure to flood.

23 The commissioner may adopt rules pursuant to Code chapter
24 17A as necessary to administer the bill.

25 The bill applies 60 calendar days after the date of enactment
26 to private flood insurance initially delivered, issued for
27 delivery, continued, or renewed in this state on or after the
28 date of enactment. The bill applies 180 calendar days after
29 the date of enactment to private flood insurance that has been
30 initially delivered, issued for delivery, continued, or renewed
31 in this state prior to the date of enactment.