

CHAPTER 1035

COUNTY AND STATE MUTUAL INSURANCE GUARANTY ASSOCIATION

H.F. 2218

AN ACT creating a county and state mutual insurance guaranty association and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 518C.1 TITLE.

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

Sec. 2. NEW SECTION. 518C.2 SCOPE.

This chapter applies to direct insurance authorized to be written by an insurer licensed to transact insurance business in this state under chapter 518 or 518A.

Sec. 3. NEW SECTION. 518C.3 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Association" means the Iowa county and state mutual insurance guaranty association established pursuant to section 518C.4.

2. "Claimant" means an insured making a first-party claim or a person instituting a liability claim against an insolvent insurer. "Claimant" does not include a person who is an affiliate of an insolvent insurer.

3. "Commissioner" means the commissioner of insurance.

4. a. "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and subject to the applicable limits of an insurance policy subject to this chapter which is issued by an insurer, if the insurer becomes an insolvent insurer on or after July 1, 2000, and one of the following conditions exists:

(1) The claimant is a resident of this state at the time of the event giving rise to the covered claim. For a claimant other than an individual, the residence of the claimant is the state in which its principal place of business is located.

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

b. "Covered claim" does not include any of the following:

(1) An amount due a reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, indemnity recoveries, or otherwise.

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

(3) An amount due an attorney, adjuster, or witness as a fee for services rendered to the insolvent insurer.

(4) An amount that constitutes a fine, penalty, interest, or punitive or exemplary damages.

(5) An amount that is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding subparagraphs (1) through (5), a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator. However, the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. "Insolvent insurer" means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 2000, by a court of competent jurisdiction of this state.

6. "Insurer" means a person licensed to transact insurance business in this state under either chapter 518 or chapter 518A either at the time the policy was issued or when the insured event occurred.

7. "Net direct written premiums" means direct gross premiums written in this state on insurance policies subject to this chapter, less return premiums and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on a contract between insurers or reinsurers.

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

Sec. 4. NEW SECTION. 518C.4 ASSOCIATION ESTABLISHED.

An Iowa county and state mutual insurance guaranty association is established as a nonprofit unincorporated legal entity. An insurer shall be a member of the association as a condition of the insurer's authority to transact insurance business in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 518C.7 and shall exercise its powers through a board of directors established under section 518C.5. Except as otherwise provided in such plan of operation, an annual or special meeting of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance. Written notice shall be given not less than ten days prior to the meeting by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office. The notice shall state the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person and ten members present in person shall constitute a quorum for the transaction of any business.

Sec. 5. NEW SECTION. 518C.5 BOARD OF DIRECTORS.

The board of directors of the association shall consist of the officers and directors of the mutual insurance association of Iowa or its successor association. An officer and director of the mutual insurance association of Iowa shall serve in the same capacity on the association board as the officer or director serves the mutual insurance association of Iowa or its successor association.

Sec. 6. NEW SECTION. 518C.6 DUTIES AND POWERS OF THE ASSOCIATION.

1. The association is subject to all of the following:

a. (1) The association is obligated to pay a covered claim as follows:

(a) A covered claim existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation.

(b) A covered claim existing before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation.

(c) A covered claim existing before the insured replaces the policy or causes its cancellation, if the insured replaces or cancels the policy within thirty days of the final order of liquidation.

(2) An obligation under subparagraph (1) is satisfied by paying to the claimant an amount as follows:

(a) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

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

b. The association is obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy issued by the insolvent insurer.

c. The association shall assess member insurers amounts necessary to pay the obligations of the association under paragraphs "a" and "b" subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations

under section 518C.12, and other expenses as 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 less than thirty days before it is due. A member insurer shall not 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 surplus less than the minimum amounts required for a certificate of authority to transact insurance business. A 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. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

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

d. The association shall investigate claims filed with the association and adjust, compromise, settle, defend, and pay covered claims to the extent of the association's obligation and deny all other claims.

e. The association shall notify such persons as the commissioner directs under section 518C.8, subsection 2, paragraph "a".

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

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

2. The association may do any of the following:

a. Appear in, defend, and appeal an action on a claim brought against the association.

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

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

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purposes of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

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

Sec. 7. NEW SECTION. 518C.7 PLAN OF OPERATION.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to ensure the fair, reasonable, and equitable admin-

istration of the association. The plan of operation and any amendment become effective upon written approval by the commissioner.

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

2. A member insurer shall comply with the association's plan of operation.

3. The plan of operation shall provide for all of the following:

a. Procedures for the performance of the duties and execution of the powers of the association under section 518C.6.

b. Procedures for managing the assets of the association.

c. Procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer constitutes notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

d. The place and time for meetings of the board of directors, as necessary.

e. Procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

f. That any member insurer aggrieved by a final action or decision of the association may appeal the action or decision to the commissioner within thirty days after the action or decision.

g. Additional provisions necessary or proper for the performance of the duties and execution of the powers of the association.

4. The plan of operation may delegate any or all duties and powers of the association, except those under section 518C.6, subsection 1, paragraph "c", and subsection 2, paragraph "c", to a person with the approval of both the board of directors and the commissioner. Such delegation shall only be made to a person extending protection which is not substantially less favorable and effective than that provided by this chapter. Such person shall be reimbursed as a servicing facility and shall be paid for the performance of any other functions of the association.

Sec. 8. NEW SECTION. 518C.8 DUTIES AND POWERS OF THE COMMISSIONER.

1. The commissioner shall do both of the following:

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

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may do any of the following:

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

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a penalty on any member insurer which fails to pay an assessment when due. Such penalty shall not exceed five percent of the unpaid assessment per month, except that a penalty shall not be less than one hundred dollars per month.

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

3. Judicial review of an action of the commissioner may be sought pursuant to chapter 17A.

Sec. 9. NEW SECTION. 518C.9 EFFECT OF PAID CLAIMS.

1. A person recovering under a claim made pursuant to this chapter is deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. A claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such claimant would have been required to cooperate with the insolvent insurer. The association has no cause of action against a claimant for any sums the association has paid out.

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

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

Sec. 10. NEW SECTION. 518C.10 NONDUPLICATION OF RECOVERY.

1. A person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, is first required to exhaust the person's rights under the other policy. An amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 518C.6, subsection 1, paragraph "a". For purposes of this section, another insurance policy means a policy issued by an insurance company, whether a member insurer or not, which policy insures against any of the types of risks insured by an insurance company authorized to transact insurance business under chapter 518 or 518A, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or an equivalent entity shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first-party claim for damage to property with a permanent location, recovery shall be first sought from the association or equivalent entity of the state in which the property is permanently located. An amount recovered from any other guaranty association or equivalent entity shall be subtracted from the maximum liability of the Iowa county and state mutual insurance guaranty association under section 518C.6, subsection 1, paragraph "a".

Sec. 11. NEW SECTION. 518C.11 PREVENTION OF INSOLVENCIES.

1. a. The board of directors, upon majority vote and for purposes of detecting and preventing insurer insolvencies, may do either of the following:

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

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

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

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

Sec. 12. NEW SECTION. 518C.12 EXAMINATION OF THE ASSOCIATION.

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

Sec. 13. NEW SECTION. 518C.13 TAX EXEMPTION.

The association is exempt from the payment of fees and taxes levied by this state or a subdivision of the state except for taxes levied on property.

Sec. 14. NEW SECTION. 518C.14 RECOGNITION OF ASSESSMENTS IN RATES.

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

Sec. 15. NEW SECTION. 518C.15 IMMUNITY.

Liability and a cause of action shall not arise against any member insurer, the association, its agents or employees, the board of directors, the commissioner, or the commissioner's representatives, for any reasonable action taken in the performance of duties and execution of powers as provided for under this chapter.

Sec. 16. NEW SECTION. 518C.16 STAY OF PROCEEDINGS.

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

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

Sec. 17. NEW SECTION. 518C.17 ACTIONS AGAINST THE ASSOCIATION.

An action against the association shall be brought against it in the association's own name and only in the Polk county district court. Service of original notice in an action against the association may be made on any officer of the association or upon the commissioner of insurance on its behalf. The commissioner shall promptly transmit any notice served upon the commissioner to the association.

Sec. 18. NEW SECTION. 518C.18 TIMELY FILING OF CLAIMS.

Notwithstanding any other provision of this chapter, a covered claim shall not include a 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.

Sec. 19. NEW SECTION. 518C.19 PROHIBITED ADVERTISING.

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