

council to foresee during times of normalcy the exigencies of such an energy emergency and thereby prescribe all necessary courses of action. Accordingly, I have vetoed section 28.

With the exception of sections 8, 9 and 28 which I have vetoed for the above stated reasons, I have approved the remainder of Engrossed Substitute Senate Bill No. 3172. I wish to take this opportunity also to commend the Legislature for its development of this important legislation, and in particular, to express my appreciation to those members who toiled long and hard in directing the bill through the legislative process."

## CHAPTER 109

[House Bill No. 1497]

### INSOLVENCY OF INSURERS

AN ACT Relating to the insolvency of insurers; amending section .31.28, chapter 79, Laws of 1947 and RCW 48.31.280; amending section 2, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.020; amending section 3, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.030; amending section 4, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.040; amending section 5, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.050; amending section 6, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.060; amending section 8, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.080; amending section 16, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.160; adding a new section to chapter 79, Laws of 1947 and to chapter 48.30 RCW; adding a new section to chapter 79, Laws of 1947 and to chapter 48.31 RCW; adding a new section to chapter 265, Laws of 1971 ex. sess. and to chapter 48.32 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section .31.28, chapter 79, Laws of 1947 and RCW 48.31.280 are each amended to read as follows:

(1) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding three hundred dollars for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration. ~~((2))~~ Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees.

(2) The priorities of distribution in a liquidation proceeding shall be in the following order:

- (a) Expenses of administration;
  - (b) Compensation of employees as provided in subsection (1) of this section;
  - (c) Federal, state, and local taxes;
  - (d) Claims arising out of and within the coverages of insurance policies issued by the insurer being liquidated for losses incurred, including:
    - (i) Third party claims and claims for unearned premiums;
    - (ii) Claims presented by the Washington Insurance Guaranty Association which represent "covered claims" as defined in RCW 48.32.030(4) and which have been paid by such association;
    - (iii) Claims to which the Washington life and disability insurance guaranty association shall have become subrogated under the provisions of RCW 48.32A.060;
- and

(iv) Claims similar to those described in parts (ii) and (iii) of this subsection as presented by similar guaranty associations of other states; and

(e) All other claims.

Sec. 2. Section 2, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.020 are each amended to read as follows:

This chapter shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workmen's compensation and ocean marine insurance.

Sec. 3. Section 3, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.030 are each amended to read as follows:

As used in this chapter:

(1) "Account" means ~~((any))~~ one of the ~~((three))~~ two accounts created in RCW 48.32.040 as now or hereafter amended.

(2) "Association" means the Washington Insurance Guaranty Association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means an unpaid claim, ~~((excluding))~~ including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise: PROVIDED, That a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" shall not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) ~~((is licensed))~~ holds a certificate of authority to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" means any individual, corporation, partnership, association, or voluntary organization.

Sec. 4. Section 4, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.040 are each amended to read as follows:

There is hereby created a nonprofit unincorporated legal entity to be known as the Washington Insurance Guaranty Association. All insurers defined as member insurers in RCW 48.32.030(6) as now or hereafter amended shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050 as now or hereafter amended. For purposes of administration and assessment, the association shall be divided into ~~((three))~~ two separate accounts: (1) ~~((The workmen's compensation insurance account; (2)))~~ The automobile insurance account; and ((3)) (2) the account for all other insurance to which this chapter applies.

Sec. 5. Section 5, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.050 are each amended to read as follows:

(1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner(s). Vacancies on the board shall be filled for the remaining period of the term ~~((in the same manner as initial appointments))~~ by a majority vote of the remaining board members, subject to the approval of the commissioner. ~~((If no members are selected within sixty days after May 21, 1971, the commissioner may appoint the initial members of the board of directors.))~~

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Sec. 6. Section 6, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.060 are each amended to read as follows:

(1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the ~~((determination of insolvency))~~ order of liquidation and arising within thirty days after the ~~((determination of insolvency))~~ order of liquidation, or before the policy expiration date if less than thirty days after the ~~((determination))~~ order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the ~~((determination))~~ order of liquidation, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars ~~((; except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy))~~. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the ~~((three))~~ two accounts enumerated in RCW 48.32.040 as now or hereafter amended separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subsection (1)(a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the ~~((preceding))~~ calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the ~~((preceding))~~ calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the ~~((preceding))~~ calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available ~~((shall))~~ may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer servicing as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by ~~((the))~~ such member insurer if they are chargeable to the account for which the assessment is made.

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

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more 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) 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 shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

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

(b) Employ or retain such persons as are 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 such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

Sec. 7. Section 8, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.080 are each amended to read as follows:

(1) The commissioner shall:

(a) Notify the association promptly whenever he or any of his examiners has, or comes into, possession of any data or information relative to any insurer under his jurisdiction for any purpose indicating that such insurer is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency.

(b) Furnish to the association copies of all preliminary and final audits, investigations, memorandums, opinions, and reports relative to any insurer under his jurisdiction for any purpose, promptly upon the preparation of any thereof.

(c) ~~((a))~~ Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time such complaint is filed with a court of competent jurisdiction.

(d) ~~((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:

(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. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance 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 fine on any member insurer which fails to pay

an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Whenever the commissioner or any of his examiners comes into possession of or obtains any data or information indicating that any insurer under his jurisdiction for any purpose is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency, he shall within fifteen days of having such data or information commence investigation and/or take formal action relative to any such insurer, and in addition within said time shall notify the association of such condition. Upon failure of the commissioner so to act, the association is hereby authorized and directed to act and commence appropriate investigation or proceedings or may at its option refer the matter to the attorney general for appropriate action relative to which the attorney general shall keep the association advised throughout any such action or proceedings.

(4) ((3)) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction.

Sec. 8. Section 16, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.160 are each amended to read as follows:

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for ((sixty)) one hundred eighty days and such additional time thereafter as may be fixed by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. Any judgment under any decision, verdict, or finding based on default of the insolvent insurer or on its failure to defend an insured which is unsatisfied at the date the insolvency is determined shall be set aside on the motion of the association and the association shall be permitted to defend such claim on the merits.

NEW SECTION. Sec. 9. There is added to chapter 79, Laws of 1947 and to chapter 48.30 RCW a new section to read as follows:

No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Washington Insurance Guaranty Association or the Washington Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington Insurance Guaranty Association Act or the Washington Life and Disability Insurance Guaranty Association Act.

NEW SECTION. Sec. 10. There is added to chapter 79, Laws of 1947 and to chapter 48.31 RCW a new section to read as follows:

(1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to

disperse assets out of such insurer's marshalled assets from time to time as such assets become available to the Washington Insurance Guaranty Association and the Washington Life and Disability Insurance Guaranty Association and to any entity or person performing a similar function in another state. (The Washington Insurance Guaranty Association and the Washington Life and Disability Insurance Guaranty Association and any entity or person performing a similar function in other states shall in this section be referred to collectively as the "associations".)

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280 (2)(a), (b), and (c) as now or hereafter amended;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280 as now or hereafter amended in accordance with such priorities. No bond shall be required of any such association; and

(e) A full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matters as the court may direct.

(3) The receiver's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the associations then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington Life and Disability Insurance Guaranty Association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington Life and Disability Insurance Guaranty Association Act.

(5) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of such application to the court.

**NEW SECTION.** Sec. 11. There is added to chapter 265, Laws of 1971 ex. sess. and to chapter 48.32 RCW a new section to read as follows:

Every member insurer which during any calendar year shall have paid one or more assessments levied pursuant to RCW 48.32.060(1)(c) as now or hereafter

amended shall be entitled to take, as a credit against any premium tax falling due under RCW 48.14.020, one-fifth of the aggregate amount of such aggregate assessments during such calendar year for each of the five consecutive calendar years beginning with the calendar year following the calendar year in which such assessments are paid.

***\*NEW SECTION. Sec. 12. This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.***

\*Sec. 12. was vetoed, see message at end of chapter.

Passed the House March 9, 1976.

Passed the Senate March 12, 1976.

Approved by the Governor March 19, 1976 with the exception of section 12 which is vetoed.

Filed in Office of Secretary of State March 19, 1976.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to one section House Bill No. 1497 entitled:

"AN ACT Relating to the insolvency of insurers."

This bill makes a number of changes in the insurance code relating to insolvent insurance companies and the distribution of assets in liquidation proceedings. Section 12 is an emergency clause providing for the bill to go into effect immediately. I have decided to veto this section for reasons to be stated, but I do so with some reluctance because it is my understanding that there are a number of insurance companies across the country which also do business in this state on the verge of insolvency, and the provisions of this bill will be needed in the event any of those companies become insolvent in the coming weeks.

However, it has been brought to my attention that sections 1 and 10 of the bill may inadvertently and adversely affect the legal remedies of some 1400 residents of this state involved in pending litigation in federal district court against an insolvent insurance company and its officers. The suit, entitle Amman, et al. v. Cissna, Civil Action No. 7452 in the Western District of the U.S. District Court, is a long pending class action that is now approaching final disposition. I have been assured by several of the sponsors of the bill and the Office of the Insurance Commissioner, who participated in the drafting of the bill, that sections 1 and 10 were not intended to apply to existing claims and pending litigation. Apparently statements to that effect were also made to legislative committees considering the bill. There is no clear indication to that effect, however, in the bill itself.

By vetoing the emergency clause, it is my hope that sufficient time will be allowed the plaintiffs in the above cited case to reduce their claims to final judgment, since only the issue of damages remains and a final determination on that issue by the court is due shortly. In addition, it is my intention through this message to reiterate the legislative intent as it has been stated to me by the proponents of the measure that sections 1 and 10 of the bill do not apply to existing claims and pending litigation such as the Ammans case.

For the foregoing reasons, I have determined to veto section 12. With that exception, the remainder of the bill is approved."