

## A BILL

### FOR AN ACT TO SECURE POLICY-HOLDERS IN FIRE INSURANCE COMPANIES FROM UNJUST FORFEITURES OF POLICIES.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That in all cases  
2 where a fire insurance company, doing business in this state, has taken a premium note or  
3 contract which, by its terms, or by any agreement or rule of the company, is assessable for  
4 the premium due on the policy for which it was given, if the company shall at any time elect  
5 to declare the policy forfeited, by reason of the non-payment of the assessment made on the  
6 premium note or contract, such election to forfeit the policy shall also have the effect to ren-  
7 der null and void such premium note or contract, excepting for the premium due up to the  
8 date the policy is declared forfeited, for the risk carried by the company prior to that date;  
9 and in all cases where the non-payment of the assessment, or premium, shall work a forfeit-  
10 ure of the policy, it shall also operate to make null and void the premium note or contract,  
11 excepting for the premium due thereon at the time of the forfeiture, for the risk carried by  
12 the company prior and up to such forfeiture.

SEC. 2. If, by the terms of the premium note or contract, or by the rules of the company,  
2 it may elect to declare the policy forfeited, it may do so, and compel payment of the pre-  
3 mium for the risk up to the time it declares the policy forfeited; but if the company shall  
4 not elect to declare the policy forfeited, and brings suit on such premium note or contract,  
5 and recovers thereon a judgment for more than sufficient to cover the premium due at the  
6 date of the commencement of the suit, the policy shall then remain in full force for the same  
7 time it would have done had the assured paid to the company the amount evidenced by the  
8 judgment.

*Sub for House File 157.*

MAJORITY REPORT.

G. R. STRUBLE, from the Committee on Insurance, submitted the following report:

MR. SPEAKER:

Your Committee on Insurance, to whom was referred house file No. 157, a bill for an act to secure policy holders in fire insurance companies from unjust forfeitures of policies, beg leave to report that they have had the same under consideration, and the majority of the committee have instructed me to report the same back to the house with the recommendation that it be indefinitely postponed.

G. R. STRUBLE, *Chairman.*

Ordered passed on file.

MINORITY REPORT.

MR. STRUBLE, from the Committee on Insurance, submitted the following minority report:

MR. SPEAKER:

A minority of your Committee on Insurance, having failed to agree with the majority of the committee, to whom was referred house file No. 157, a bill for an act to secure policy holders in fire insurance companies from unjust forfeitures of policies, beg leave to report that they have had the same under consideration, and herewith submit a substitute for the same, and report the same back to the house with the recommendation that it be adopted, and, when adopted, that it do pass.

The minority of the committee beg leave, also, to submit the following reasons why the substitute should be adopted, as follows:

1. It has seemed to us to be grossly unjust for an insurance company to compel parties holding policies to pay for insurance, and then by a trick deprive them of it. As the law now stands, just such wrongs have been committed, and will be again, unless some protection is granted to policy-holders.

2. We think it fair that an insurance company, when it holds a note for premium and the policy becomes forfeited, or is forfeited by the company, should not be permitted to enforce payment of the note for any sum beyond the premium earned while the policy was in force, at short rates and cost of writing the risk. But it is a fact that frequently policies are forfeited for non-payment of premium notes, and the notes are retained by the company and collection thereof

enforced, not only for the premium earned during the time the company carried the risk, but for the whole term for which the policy was issued in the first instance. To compel parties to pay insurance companies for risks they never carried is unconscionable, and the law-making power should prevent such abuses by creatures of its creation.

3. To illustrate the evil the substitute herewith reported is intended to remedy, let us state a case—which is of frequent occurrence in this state. A company insures B. for \$2,000 for three years at two per cent premium, \$40, and takes B.'s note for that amount due in one year. At the end of one year B. cannot pay the note, or is absent and forgets to do so, and his policy is forfeited, and of course all risk on the part of the company ceases. The company retains the note, sues B., recovers judgment for \$42.40 and costs; the judgment stands two years, and then amounts to \$47.48; execution is issued and B. pays the full amount thereof, and only received one year's insurance. But suppose at the end of one year B.'s house burned, the company would not be liable, and yet it makes B. pay for three years' insurance.

The bill submitted by the minority is intended to make the operation of the contract of insurance reciprocal, and to prevent the company from collecting from the assured a greater sum than it has justly and fairly earned.

The note and policy form in fact one contract. When the liability of the company for any reason ceases on the policy, that of the assured should cease on the note. Can any one say why this should not be so?

If an insurance company issues a policy for \$2,000 for one year at one per cent and takes a note from the assured due in one year at 6 per cent interest for the premium, \$20, and for writing the risk, \$5, at the end of the year the policy is at an end and the company holds a note against the assured for \$25 and 6 per cent interest.

Now if the company issues a policy for three years at two per cent and takes a note for \$40 due in one year, and forfeits the policy for non-payment of the note, it has carried the same risk for the same time as in the first instance. Then how much should the company have a right to recover on the note? The answer is apparent—\$25 and 6 per cent interest for one year.

But the insurance man says the assured in the latter case should pay \$42.40. The injustice of such a claim is apparent.

4. Section 2 of the substitute herewith reported is intended to prevent abuses in cases where the company has the right to forfeit the policy at its election. To illustrate: The company insures B.'s house for three years, and takes a note due in one year for the whole premium and reserves the right to forfeit the policy for non-payment of the note. At the end of the year B. fails to pay the note. The company does not elect to forfeit the policy, and retains B.'s note. B. remains in ignorance of what the company has done in the matter. If B.'s house does not burn

during the three years, the company presents the note and demands payment and disclaims having elected to forfeit the policy. But if the house burns after the note matured, and he applies to the company for payment for his loss, he is met with the reply, "We elected to forfeit your policy when your note became due."

It seems clear that an insurance company, in such cases, should be required to make its election, and notify the assured thereof.

We see no reason why insurance companies should be exempted from the restraints of the wholesome rules of fair dealing which govern individual conduct, and prevent unconscionable advantages in favor of one party to a contract.

Respectfully submitted,

G. R. STRUBLE.

SUBSTITUTE FOR HOUSE FILE NO. 157.]

*[Com. on Ins.]*

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FOR AN ACT TO SECURE POLICY-HOLDERS IN FIRE INSURANCE COMPANIES FROM  
UNJUST FORFEITURES OF POLICIES.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That in every in-  
2 stance where a fire insurance company or association, doing business in this state, has taken  
3 or shall hereafter take a note or contract for the premium on any policy, or has taken or  
4 shall hereafter take a premium note or contract which, by its terms, or by any agreement or  
5 rule of such company or association, is assessable for the premium due on the policy for  
6 which it was given, and shall declare such policy forfeited for any cause, or if such policy be-  
7 comes forfeited for any reason, such forfeiture shall render null and void such note or con-  
8 tract, or any judgment recovered thereon, in whosoever hands the same may be, except-  
9 ing for the premium earned prior to such forfeiture, at the customary short rates of such com-  
10 pany, for the time the policy was in force, and the expense of writing the risk.

SEC. 2. Where the insurer, by the terms of the policy, or by any note or contract, may  
2 elect to declare the policy forfeited for non-payment of premium, or for any cause, and the  
3 policy does not become forfeited from any other reason, it shall continue in full force until  
4 the insurer serves upon the assured a written notice that the policy has been declared for-  
5 feited. Such notice may be served upon the assured personally, or by mail, addressed to him  
6 at his postoffice address named in or on the policy.

*Sub for House File No. 157.*

SENATOR NICHOLS OF BENTON, from the Committee on Insurance, submitted the following report:

MR. PRESIDENT:

Your Committee on Insurance, to whom was referred house file No. 157, a bill for an act to secure policy holders in fire insurance companies from unjust forfeitures of policies, beg leave to report that they have had the same under consideration, and a majority of your committee have instructed me to report the same back to the senate with the recommendation that the same be amended by striking out all after the enacting clause and inserting the amendments herewith submitted, as follows: (see amendments which are made part of this report), and that when so amended the bill do pass.

J. D. NICHOLS, *Chairman.*

Ordered passed on file.

#### AMENDMENTS.

SEC. 1. That in every instance where a fire insurance company or association doing business in this state shall hereafter take a note or contract for the premium on any insurance policy, or shall hereafter take a premium note or contract which, by its terms or by any agreement or rule of the company or association, is assessable for the premium due on the policy for which it was given, such insurance company or association shall not declare such policy forfeited or suspended for nonpayment of such note or contract except as hereinafter provided, anything in the policy or application to the contrary notwithstanding.

SEC. 2. At any time after the maturity of any note or contract, whether assessable or where the time of payment is fixed in the contract, given for the premium on any policy of insurance, such company or association may serve a notice in writing upon the assured that his note or an installment thereof is due, stating the amount which is due on the note or contract, and also the amount required to pay the customary short rates, including the expense of taking the risk up to the time the policy will be suspended under the notice in order to cancel the policy, and that unless payment is made within thirty days his policy will be suspended. Such notice may be served either personally or by registered letter addressed to the assured, at his post-office address named in or on the policy, and no policy of insurance shall be suspended for nonpayment of such amount until thirty days after such notice has been served.

SEC. 3. The assured may, at any time after the maturity of the note, contract or installment, pay to the insurance company or association the customary short rates, including the expense of taking the risk, and upon such payment, if he so elect, his said policy shall be canceled, and any note or contract, or any judgment rendered thereon, shall be canceled and shall be actually void in whatsoever hands the same may be: *provided*, that the assured may, at any time before cancellation of the policy, pay to the insurance company or association the full amount due upon any note or contract, and from the date of such payment the policy shall be reissued and shall be in full force and effect: *provided*, such payment is made before a loss occurs. *And provided, further*, that where any insurance company or association shall bring suit upon such note or contract and shall collect the same, from the date of such collection the policy shall be reissued and be in full force from the time of such collection: *provided*, such collection is made before a loss occurs. The provisions of this act shall apply to and govern all contracts and policies of insurance contemplated in this chapter, anything in the application or policy to the contrary notwithstanding.

SEC. 4. This act, being deemed of immediate importance, shall be in force and take effect from and after its publication in the *Iowa State Register* and the *Iowa State Leader*, newspapers published at Des Moines, Iowa.

SUBSTITUTE FOR HOUSE FILE NO. 157.]

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SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That in every instance where a fire insurance company or association, doing business in this state, has taken or shall hereafter take a note or contract for the premium on any policy, or has taken or shall hereafter take a premium note or contract which, by its terms, or by any agreement or rule of such company or association, is assessable for the premium due on the policy for which it was given, and shall declare such policy forfeited, for any cause, or if such policy becomes forfeited for any reason, such forfeiture shall render null and void such note or contract, or any judgment recovered thereon, in whosoever hands the same may be, excepting for the premium earned prior to such forfeiture, at the customary short rates of such company, for the time the policy was in force, and the expense of writing the risk.

SEC. 2. Where the insurer, by the terms of the policy, or by any note or contract, may elect to declare the policy forfeited for non-payment of premium, or for any cause, and the

3 policy does not become forfeited from any other reason, it shall continue in full force until  
4 the insurer serves upon the assured a written notice that the policy has been declared for-  
5 feited. Such notice may be served upon the assured personally, or by mail, addressed to him  
6 at his post-office address named in or on the policy.

REASONS GIVEN BY THE MAJORITY OF COMMITTEE ON INSURANCE FOR  
REPORTING IN FAVOR OF THE INDEFINITE POSTPONEMENT OF H. F. NO. 157.

*To the Speaker and House of Representatives:* The undersigned members of the Committee on Insurance, in view of the fact that the Chairman of the committee has, in a minority report, given some reasons why the bill referred to should pass, beg leave to mention a few of the reasons why we made the recommendation that the bill be indefinitely postponed.

Chapter 39, Acts 1878, is as follows:

*“Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. That the auditor of state shall have power, and it shall be his duty to examine the form of all policy contracts hereafter issued, or proposed to be issued, by any fire insurance company, association, or corporation now authorized by law, or that may hereafter apply to be authorized to transact the business of fire insurance in this state, and the auditor shall refuse to authorize any such company, association, or corporation to do business in this state, and shall not renew the authority or certificates of any such company, association, or corporation authorized to do business in this state, whenever the form of policy contract issued or proposed to be issued by any such company, association, or corporation does not provide for the cancellation of the same at the request of the insured upon equitable terms, and in case of any violation of this act, it shall be the duty of the auditor to revoke the authority of such company to do business within this state. The provisions of this act shall not apply until January 1, 1879, to any company now holding a certificate of authority from the auditor to do business in this state.

Approved March 15, 1878.”

This permits the cancellation of a policy on request of the insured. Under this law the Auditor has approved the forms now in use as follows:

“This insurance may be terminated at the request of the assured in all cases where the premium has been heretofore actually paid in cash, according to the terms of this Policy, or the note given for such premium—in which case the company shall retain the expenses of writing the risk, and the customary short rates from the date of the Policy up to the time it is thus terminated.”

This provides for all cases except where a policy-holder causes the *suspension* of his policy by a breach of his contract to pay. During that time the policy is suspended. It comes into life whenever the policy-holder pays. As to these cases, we suggest:

*First*—If this bill becomes a law, the policy-holder who pays as he agreed to pay is injured, just to the extent of the amount of the release of the contract breaker. That is, if the release amounts to ten per cent. of all the note assets of the company, then the ten per cent. must be added to the cost of insurance, and the other policy-holders must pay this additional ten per cent.; or, to that extent, the value of the insurance is depreciated. This same principle applies in common. Enough must be added to the price of all goods sold to paying customers to make up the losses of non-paying customers; and if this is not done, insolvency follows. Precisely so in insurance. The principle is bad. This legislation encourages the careless and profligate insurer at the expense of the careful and economic insurer.

*Second*—This law would leave a large number of trifling claims on notes, (being the difference between short rates and long rates,) to be adjusted and collected. These small amounts would not pay the expenses of adjustment or collection, and yet, this would seriously affect the assets of the company.

*Third*—This law, in our opinion, would drive capital from the State and compel some companies to change their system of insurance or leave the State. Competition would be thus destroyed, and in that proportion insurance rates would advance to the loss of the public. Most of the Home Companies do business on the cash plan—taking notes to accommodate farmers. In other words, the insurance note is simply a loan to accommodate those who do not have the cash. The legislature ought not to destroy these notes any more than the notes given for any other loan.

*Fourth*—It is claimed that as the policy may be suspended to the end of the term of insurance, if payment is not made, that the party giving the note ought to be released, and only pay for the time the policy has run. We answer: it is not the fault of the company, that his policy is suspended. He can have his policy cancelled any time if he desires to do so, by paying up the amount earned. (See law above quoted, and approved by Auditor). If he will not take the trouble to do this, he ought not to be relieved in *advance* by an act of the legislature.

JOHN F. DUNCOMBE,  
ERNST MUELLER,  
S. M. YORAN,  
MOSES BLOOM,  
R. D. STEPHENS,  
Wm. B. PERRIN,  
J. A. HARVEY.