NCIGF Property and Casualty Insurance Guaranty Association

Model Act

Disclaimers: Association counsel should review applicable laws and case law in their states to determine whether any provisions of this model require modification or additional considerations.

When amending statutes, careful consideration should be given to the effective date of the changes, particularly where amendments affect claims, coverage, or bar dates, to avoid unintended impacts on existing insolvency proceedings.

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Section 1. Title

This Act shall be known as the [state] Property and Casualty Insurance Guaranty Association Act.

Section 2. Purpose

The purpose of this Act is to provide a mechanism for the payment of covered claims under certain insurance policies for insolvent insurers, avoid excessive delay in payment, minimize financial loss to claimants or policyholders resulting from insurer insolvency consistent with the provisions and limitations of this Act, provide an association to assess the cost of such protection among insurers, assist in the monitoring and mitigating of the impact of insurer insolvencies, and facilitate their orderly administration.

Section 3. Scope

This Act shall apply to all kinds of direct insurance, but shall not be applicable to the following:

(1) Life, annuity, health or disability insurance;

(2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;

(3) Fidelity or surety bonds, or any other bonding obligations;

(4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

(5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits, except for coverages that may be set forth in a Cybersecurity insurance policy;[1]

[1] This change is intended to clarify the treatment of cybersecurity insurance coverage. Any need to revise this Scope section should be assessed under applicable state law, nature of

(6) Title insurance;

(7) Ocean marine insurance;

(8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

(9) Any insurance provided by or guaranteed by government.[2]

Section 4. Definitions

As used in this Act:

(1) [Alternative for separate accounts
"Account" means any one of the three accounts created by section 5.]

[Alternative for a single account
(1) "Account" means the single account maintained by the Association under section 5 for all kinds of insurance to which this Act applies.]

(2) "Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an Insolvent insurer on December 31 of the year immediately preceding the date the insurer becomes an Insolvent insurer

(3) "Association" means the [state] Property and Casualty Insurance Guaranty Association created under this Act.

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coverage provided, and relevant product definitions, and may not be necessary in all states.

[2] While already excluded from guaranty fund coverage, some states may wish to expressly state that excess and surplus lines insurers, captive insurers, risk retention groups, parametric insurance products, and similar nonparticipating markets are not within the scope of guaranty fund coverage.

(4) “Association similar to the Association” means any guaranty association, security fund or other insolvency mechanism which affords protection similar to that of the Association. The term also shall include any property/casualty insolvency mechanism which obtains assessments or other contributions from insurers on a pre-insolvency basis.

(5) “Claimant” means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an Affiliate of the Insolvent insurer may be a Claimant.

(6) “Commissioner” means the Commissioner of Insurance of this State.

(7) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that Control does not exist in fact.

(8) (a) “Covered claim” means an unpaid claim, including one for unearned premiums, submitted by a Claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies issued by an insurer, if such insurer becomes an Insolvent insurer after the effective date of this Act and:

(i) the Claimant or Insured is a resident of this state at the time of the insured event; provided that for entities other than an individual, the residence of a Claimant, Insured or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(ii) the claim is a first party claim for damage to property with a permanent location in this state.

(b) "Covered claim" shall not include:

(i) any amount awarded as punitive or exemplary damages;

(ii) any amount sought as a return of premium under any retrospective rating plan;

(iii) any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or Self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation or Self-insurer may be asserted against a person insured under a policy issued by an Insolvent insurer other than to the extent such claim exceeds the Association obligation limitations set forth in section [7(1)] of this Act;

Option A for (8) (b) (iv) – Exclude only first party claims

(iv) any first party claim by an Insured whose net worth exceeds $50 million on December 31 of the year next preceding the date the insurer becomes an Insolvent insurer; provided that an Insured's net worth on such date shall be deemed to include the aggregate net worth of the Insured and all of its subsidiaries and affiliates as calculated on a consolidated basis;

Option B for (8) (b) (iv) & (v) – Exclude both first- and third-party claims

(iv) any first party claim by an Insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an Insolvent insurer; provided that an Insured's net worth on such date shall be deemed to include

the aggregate net worth of the Insured and all of its subsidiaries and affiliates as calculated on a consolidated basis;

(v) any third party claim relating to a policy of an Insured whose net worth exceeds $50 million on December 31 of the year next preceding the date the insurer becomes an Insolvent insurer; provided that an Insured's net worth on such date shall be deemed to include the aggregate net worth of the Insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and further provided, however, that this exclusion shall not apply to third party claims against the Insured where the Insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law, or if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the Insured bankrupt or insolvent or approving a petition seeking reorganization of the Insured or of all or substantial part of its assets;

(vi) any claim that would otherwise be a Covered claim, but is an obligation to or on behalf of a person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the Claimant at the time specified by such law, and which association has denied coverage to that Claimant on that basis;

(vii) any first party claims by an Insured which is an Affiliate of the Insolvent insurer;

(viii) any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the Insolvent insurer or an Insured prior to the date it was determined to be insolvent;

(ix) any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any

Insured or Claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the Association; or

(x) any claims for interest.

(c) Notwithstanding any other provision in this Act, an insurance policy issued by a Member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of another insurer, pursuant to a state statute providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity (commonly known as "Division" or "Insurance Business Transfer" statutes), shall be considered to have been issued by a Member insurer which is an Insolvent Insurer for the purposes of this Act in the event that the insurer to which the policy has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in liquidation.

(d) An insurance policy that was issued by a non-Member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of a Member insurer under a state statute described in section 4 (8) (c) shall not be considered to have been issued by a Member insurer for the purposes of this Act.[3]

(9) "Cybersecurity insurance," for purposes of this Act, includes first- and third-party coverage, in a policy or endorsement, written on a direct, admitted basis for losses and loss mitigation arising out of or relating to data privacy breaches, unauthorized information network security intrusions, computer viruses, ransomware, cyber extortion, identity theft, and similar exposures.

(10) "Insolvent insurer" means an insurer licensed to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation has been entered

[3] This is a straightforward approach that differs from the NAIC fix, which also addresses these issues. Both versions have been adopted by various states.

after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.[4]

(11) “Insured” means any named insured, any additional insured, any vendor, lessor, or any other party identified as an insured under the policy.

(12) (a) “Member insurer” means any person who:

(i) writes any kind of insurance to which this Act applies under section [3], including the exchange of reciprocal or inter-insurance contracts; and

(ii) is licensed to transact insurance in this state (except at option of state).

(b) An insurer shall cease to be a Member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this Act applies, however the insurer shall remain liable as a Member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which became an Insolvent insurer prior to the termination or expiration of such insurer's license.

(13) “Net direct written premiums” means direct gross premiums written in this state on insurance policies to which this Act 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.

(14) "Ocean marine insurance" includes any form of insurance, regardless of the name, label, or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance, such as

[4] Some states may wish to add the following language to the end of this definition to explain that final order means a non-appealable order that has not been stayed: “and which has not been stayed or the subject of a perfected appeal or other comparable order.”

hull and machinery, marine builders risk, and marine protection and indemnity. Such perils and risk insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the Insured or another person.[5]

(15) "person" means any individual or legal entity, including governmental entities.

(16) "Self-insurer" means a person that covers its liability through a qualified individual or group self-insurance program, or any other formal program created for the specific purpose of covering liabilities typically covered by insurance.

Section 5. Creation of the Association

There is created a nonprofit unincorporated legal entity to be known as the [state] Property and Casualty Insurance Guaranty Association. All insurers defined as Member insurers in section [4 (12)] 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 section [8] and shall exercise its powers through a board of directors established under section [6].

[Alternate language for a single account
For purposes of administration and assessment, the Association shall maintain a single account for all kinds of insurance to which this Act applies.]

[Alternate language for separate accounts
For purposes of administration and assessment, the Association shall be divided into three separate Accounts:

[5] States whose insurance codes lack an adequate definition of ocean marine insurance may wish to include this definition.

(1) the workers' compensation insurance account;
(2) the automobile insurance account; and
(3) the account for all other insurance to which this Act applies.][6]

Section 6. Board of Directors

(1) The board of directors of the Association shall consist of not less than [#] nor more than [#] 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. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members subject to the approval of the Commissioner. If no members are selected within sixty (60) days after the effective date of this Act, 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 of directors may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors.

(4) Any board member who is an insurer in receivership shall be terminated as a board member, effective as of the date of the entry of the order of receivership. Any resulting vacancies on the board shall be filled for the remaining period of the term in accordance with the provisions of subsection (1).

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[6]Section 5 includes alternative language for a single account or separate accounts. A state should select one alternative after examining its insurance market. The major consideration is whether each account would have a premium base large enough to cover possible insolvencies. Separate accounts permit assessments to be generally limited to insurers writing the same kind of insurance as the insolvent insurer and are appropriate where they are both necessary and feasible. A single account spreads assessments among all Member insurers, regardless of the kind of insurance written by the insolvent insurer and may be appropriate where the premium base for one or more kinds of insurance would be too small to support a separate account. The corresponding provisions of Sections [7 (1)(f) and 7 (2)(g)] should be conformed to the alternative selected.

Section 7. Powers and Duties of the Association

(1) The Association shall:

(a) be obligated to pay Covered claims existing prior to the order of liquidation or arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the Insured replaces the policy or causes its cancellation, if the Insured does so within thirty days of the order of liquidation. Such obligation shall be satisfied by paying to the Claimant an amount as follows:

(i) the full amount of a Covered claim for benefits under a workers' compensation insurance coverage;

(ii) not less than $50.00[7] nor exceeding $50,000 per policy for a Covered claim for the return of unearned premium;

(iii) not less than $50.00 nor exceeding $500,000 per claim for all other Covered claims; provided, that for purposes of this limitation, all claims of any kind whatsoever arising out of, or related to, bodily injury or death to any one person shall constitute a single claim, regardless of the number of claims made, or the number of Claimants;

(iv) not less than $50.00 nor exceeding $500,000 for all first- and third-party claims under a policy or endorsement providing or that is found to provide Cybersecurity insurance coverage and arising out of or related to a single insured event, regardless of the number of claims made or the number of Claimants;[8]

[7] The de minimis threshold for guaranty fund claim payments is a policy determination. Deductibles are not recommended. Specifying the de minimis amount in the liquidation court order is also an option; a suggested range is $10–$50.

[8] States should assess their own market conditions when determining the appropriate claims capacities and may need to deviate from this model. States with elevated real estate

(b) not be obligated to pay a Claimant an amount in excess of the obligation of the Insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this Act, a Covered claim shall not include a claim filed with the Association after the earlier of: (i) twenty-five months after the date of the order of liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an Insolvent insurer. A Covered claim shall not include any claim filed with the Association or a liquidator for protection afforded under the Insured's policy for incurred-but-not-reported losses.[9]

(c) cease to defend an Insured on a Covered claim upon the Association's (i) payment, by settlement releasing the Insured or on a judgment, of an amount equal to the lesser of the Association's Covered claim obligation limit or the applicable policy limit or (ii) tender of such amount.

(d) be authorized, if the Association determines that there may be more than one Claimant having a Covered claim or allowed claim against the Association or any Associations similar to the Association in other states, under the policy or policies of any one Insolvent insurer, to establish a plan to allocate amounts payable by the Association in such manner as the Association in its discretion deems equitable.

(e) be deemed the insurer only to the extent of its obligation on the Covered claims and to such extent, subject to the limitations provided in this Act, shall have all rights, duties, and obligations of the Insolvent insurer as if the insurer had not become insolvent, including but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid Covered claim obligations. The

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values may wish to consider a separate, higher property limit or an inflation adjustment mechanism.

[9] The reference to incurred-but-not-reported losses clarifies the existing intent: "policyholder protection" proofs of claim preserve rights against the insolvent insurer's estate under the Insurers Rehabilitation and Liquidation Act, but do not preserve rights against the Association.

Association shall not be deemed the Insolvent insurer for any purpose relating to the issue of whether the Association is amenable to the personal jurisdiction of the courts of any state.

[Alternative for a single account
(f) assess insurers amounts necessary to pay the obligations of the Association under this Act subsequent to an insolvency, the expenses of handling Covered claims subsequent to an insolvency, the administrative and operating expenses of the Association, outstanding debt obligations, and other expenses authorized by this Act. The assessments of each Member insurer shall be in the proportion that the Net direct written premiums of the Member insurer for the calendar year preceding the assessment bears to the Net direct written premiums of all Member insurers for the calendar year preceding the assessment. Each Member insurer shall be notified of the assessment not later than thirty days before it is due. Assessments under this subparagraph (f) shall not exceed two percent of a Member insurer's Net direct written premiums for the preceding calendar year on the kinds of insurance included in the Account. This limit is separate from, and does not include, any emergency assessment levied under subsection 2(h).[10] Subject to this assessment limit, insurers may be subject to a minimum assessment determined by the board of directors, not to exceed [$1,000] in any one 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 shall pay claims in any order which it deems reasonable, including the payment of claims as they are received from the Claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of a 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 a jurisdiction in which the

[10] Regular assessments under this subparagraph and emergency assessments under subsection 2 (h) are subject to separate 2% limits, so a Member insurer's combined maximum assessment in any year could be up to 4%.

Member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. Payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of the company, credited against future assessments. Each Member insurer 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 if they are chargeable to the Account for which the assessment is made.]

[Alternative for separate accounts
(f) allocate claims paid and expenses incurred among the three Accounts separately, and assess Member insurers separately for each Account, amounts necessary to pay the obligations of the Association under this Act subsequent to an insolvency, the expenses of handling Covered claims subsequent to an insolvency, the administrative and operating expenses of the Association, outstanding debt obligations, and other expenses authorized by this Act. The assessments of each Member insurer shall be in the proportion that the Net direct written premiums of the Member insurer for the 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 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. Assessments under this subparagraph (f) shall not exceed two percent of a Member insurer's Net direct written premiums for the preceding calendar year on the kinds of insurance included in the Account. This limit is separate from, and does not include, any emergency assessment levied under subsection 2(h). Subject to this assessment limit, insurers may be subject to a minimum assessment determined by the board of directors, not to exceed [$1,000] in any one year. 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 be

prorated and the unpaid portion shall be paid as soon as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as they are received from the Claimants or in groups or categories of claims. 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. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when payment will not reduce capital or surplus below required minimums. Payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each Member insurer 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 if they are chargeable to the Account for which the assessment is made.]

(g) 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. The Association shall have the right to appoint and to direct legal counsel retained under liability insurance policies for the defense of Covered claims and to appoint and direct other service providers for covered services;

(h) not be bound by any settlement, release, compromise, waiver or judgment executed or entered within twelve months prior to an order of liquidation and shall have the right to assert all defenses available to the Association including, but not limited to, defenses applicable to determining and enforcing its statutory rights and obligations to any such claim. The Association shall be bound by any settlement, release, compromise, waiver or judgment executed or entered into more than one year prior to an order of liquidation; provided, however, that such claim is a Covered claim and such settlement or judgment was not a

result of fraud, collusion, default, or failure to defend. Further, as to any Covered claims arising from a judgment under any decision, verdict, or finding based on the default of the Insolvent insurer or its failure to defend, the Association either on its own behalf or on behalf of an Insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend such claim on the merits.

(i) 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.

(j) 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 Act.

(k) establish procedures for requesting financial information from Insureds and Claimants on a confidential basis for purposes of applying sections concerning the net worth of first- and third-party Claimants, subject to such information being shared with any other Association similar to the Association and the liquidator for the insolvent company on the same confidential basis. If the Insured or Claimant refuses to provide the requested financial information and an auditor's certification of the same where requested and available, the Association may deem the net worth of the Insured or Claimant to be in excess of [insert proper net worth amount] at the relevant time.

(l) submit, not later than ninety days after the end of the Association's fiscal year, a financial report for the preceding fiscal year in a form approved by the Commissioner.

(2) The Association may:

(a) employ or retain such persons as are necessary to handle claims, provide covered policy benefits and services, and perform other duties of the Association;

(b) borrow funds, issue bonds or other debt, and pledge its assets as security as necessary to effect the purposes of this Act in accord with the plan of operation;

(c) sue or be sued, and such power to sue includes the power and right to intervene as a party before any court in this state that has jurisdiction over an Insolvent insurer as defined by this Act;

(d) negotiate and become a party to such contracts as are necessary to carry out the purpose of this Act;

(e) bring an action against any third-party administrator, agent, attorney or other representative of the Insolvent insurer to obtain custody and control of all files, records, and electronic data ("claims information") related to an insolvent company that are appropriate or necessary for the Association, or a similar association in other states, to carry out its duties under this Act. In such a suit, the Association shall have the absolute right through emergency equitable relief to obtain custody and control of all such claims information in the custody or control of such third-party administrator, agent, attorney or other representative of the Insolvent insurer, regardless of where such claims information may be physically located. In bringing such an action, the Association shall not be subject to any defense, lien (possessory or otherwise) or other legal or equitable ground whatsoever for refusal to surrender such claims information that might be asserted against the liquidator of the Insolvent insurer. The Association is entitled to an award of reasonable attorney's fees and costs incurred by the Association in any action to obtain information under this section. The provisions of this section shall have no effect on the rights and remedies that the custodian of such claims information may have against the Insolvent insurer, so long as such rights and remedies do not conflict with the rights of the Association to custody and control of the claims information under this Act.

(f) perform such other acts as are necessary or proper to effectuate the purpose of this Act;

[Alternate for single accounts
(g) refund to the Member insurers in proportion to the contribution of each Member insurer to the Association that amount by which the assets of the Association exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the Association exceed the liabilities of the Association as estimated by the board of directors for the coming year.]

[Alternate for multiple accounts
(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.]

(h) levy an emergency assessment on Member insurers of up to two percent of each Member insurer's Net direct written premiums if regular assessments are insufficient to pay obligations of the Association under this Act subsequent to an insolvency, the expenses of handling Covered claims subsequent to an insolvency, the administrative and operating expenses of the Association, outstanding debt obligations, and other expenses authorized by this Act.

(i) contract to provide services, including consulting and claims administration services, to the Commissioner, insurance regulators, receivers, liquidators, and Associations similar to the Association. This authority requires prior approval by the board of directors. Any such contract remains subordinate to the Association's obligations under this Act to timely pay Covered claims and avoid financial loss to Claimants or policyholders.

(3) Suits involving the Association:

(a) except for actions by Member insurers aggrieved by final actions or decisions of the Association pursuant to [section 8 (3)(h)], all actions relating to or arising out of this Act against the Association must be brought in the courts in this state. Such courts shall have exclusive jurisdiction over all actions relating to or arising out of this Act against the Association.

(b) exclusive venue in any action by or against the Association is in [designate appropriate court]. The Association may, at the option of the Association, waive such venue as to specific actions.

(c) in any lawsuit contesting the applicability of sections [4 (8)(b)(iv), (v) & 11 (2) or insert net worth exclusion and/or reimbursement provision] where the Insured or Claimant has declined to provide financial information under the procedure provided in this Act, the Insured or Claimant shall bear the burden of proof concerning its net worth at the relevant time. If the Insured or Claimant fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the Association its full costs, expenses and reasonable attorney's fees in contesting the claim.

Section 8. Plan of Operation

(1) (a) The Association shall submit to the Commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The plan of operation and any amendments shall become effective upon approval in writing by the Commissioner.

(b) If the Association fails to submit a suitable plan of operation within ninety days following the effective date of this Act, or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are 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) All Member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) establish the procedures whereby all the powers and duties of the Association under section 7 will be performed;

(b) establish procedures for handling assets of the Association;

(c) establish procedures for the disposition of liquidating dividends or other monies received from the estate of the Insolvent insurer;

(d) mandate that procedures be established to designate the amount and method of reimbursing members of the board of directors under section 6;

(e) establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of Covered claims. Notice of claims to the receiver or liquidator of the Insolvent insurer shall be deemed notice to the Association or its agent and the receiver or liquidator shall periodically submit a list of claims to the Association or an Association similar to the Association in another state;

(f) establish regular places and times for meetings of the board of directors;

(g) mandate that procedures be established for records to be kept of all financial transactions of the Association, its agents and the board of directors;

(h) provide that any Member insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within thirty days after the action or decision;

(i) establish the procedures whereby selections for the board of directors will be submitted to the Commissioner;

(j) contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(4) The plan of operation may provide that any or all powers and duties of the Association, except those under section 7 (1)(f) and 7 (2)(b), are delegated to a corporation, Association similar to the Association or other organization which performs or will perform functions similar to those of this Association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Act.

Section 9. Duties and Powers of the Commissioner

(1) The Commissioner shall:

(a) notify the Association of the existence of an Insolvent insurer not later than three days after they receive 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 company at the same time that such complaint is filed with a court of competent jurisdiction;

(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) 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 $100 per month;

(b) revoke the designation of any servicing facility if the Commissioner finds claims are being handled unsatisfactorily;

(c) If the Commissioner determines that a Member insurer may be subject to a future delinquency, receivership, or liquidation proceeding or may be in a hazardous financial condition, the Commissioner may, in order to assist in the performance of the Commissioner's and the Association's duties, and consistent with the confidentiality standards set forth in this subsection and [insert reference to state statute on examinations similar to NAIC MO390 section 5F.]:

(i) share with the Association, similar associations in other states, or the National Conference of Insurance Guaranty Funds and its affiliates, subsidiaries, and successors any confidential and privileged documents, materials, or information regarding that Member insurer, including but not limited to information reported pursuant to an enterprise risk filing, examination report, preliminary examination report, working papers, recorded information, and any other documents or materials disclosed to the Commissioner in the course of the Commissioner's regulatory oversight.

(ii) disclose information described in this subsection to the Association, to similar associations in other states, and to the National Conference of Insurance Guaranty Funds and its affiliates, subsidiaries, and successors, provided that each recipient agrees in writing to hold that information confidential and in a manner consistent with this Act and to use that information solely to prepare for the possible liquidation of the

Member insurer. Access to information disclosed under this subsection shall be limited to the recipient's staff and counsel. The Association's Board and the boards of similar associations in other states may have access to the disclosed information once the Member insurer's financial condition has been publicly disclosed, whether through receivership proceedings under [insert citation to the liquidation & receivership statute] or otherwise, subject to any terms and conditions established by the Commissioner.

(iii) enter into agreements governing the sharing, use, retention, and disposition of any information disclosed under this subsection.

(iv) cooperate with the Association, similar associations in other states, the National Conference of Insurance Guaranty Funds and its affiliates, subsidiaries, and successors to facilitate an orderly transition to rehabilitation, receivership, or liquidation and minimize delay in the handling and payment of claims.

(v) if liquidation does not occur, require that the recipient of any information disclosed under this subsection, upon written notice, return or destroy such information and certify in writing that it has done so. Until such return or destruction, the recipient shall continue to hold the information confidential in accordance with this subsection.

(vi) Any information disclosed under this subsection is confidential and privileged. No waiver of any applicable privilege, statutory protection, or claim of confidentiality shall occur as a result of any disclosure authorized under this subsection.[11]

[11] Adoption of this amendment may warrant conforming changes to other confidentiality provisions in a state's insurance code — financial examinations, holding company regulation, receiverships, and related regulatory functions — so information-sharing authority applies consistently across all relevant statutes. Some states may find existing law already sufficient, but expressly addressing this adds clarity. NCIGF has draft

(d) examine, audit, or otherwise regulate the Association.

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

Section 10. Coordination Among Guaranty Associations, Commissioner, Receivers, and Liquidators

(1) The Association may join one or more organizations of other state associations of similar purposes and national organizations to further the purposes and administer the powers and duties of the Association. The Association may designate one or more of these organizations to act as a liaison for the Association and, to the extent the Association authorizes, bind the Association in agreements or settlements with the Commissioner, receivers, liquidators, or their designated representatives.

(2) The Association, in cooperation with the Commissioner, receivers, liquidators, other obligated or potentially obligated guaranty associations, national organizations, or their designated representatives, shall make all reasonable efforts to coordinate and cooperate in the most efficient and uniform manner, including the use of Uniform Data Standards as promulgated or approved by the National Association of Insurance Commissioners.

Section 11. Effect of Paid Claims

(1) Any person recovering under this Act shall be deemed to have assigned any rights under the policy to the Association to the extent of their recovery from the Association. Every Insured or Claimant seeking the protection of this Act shall cooperate with the Association to the same extent as such person would have been required to cooperate with the Insolvent insurer. The Association shall have no cause of action against the Insured of the

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amendment language for the NAIC Insurance Holding Company System Regulatory Act and Model Law on Examinations available here or email legal@ncigf.org for the full package.

Insolvent insurer for any sums it has paid out except such causes of action as the Insolvent insurer would have had if such sums had been paid by the Insolvent insurer and except as provided in subsection (2) below. In the case of an Insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the liability of the Insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The Association shall have the right to recover from the following persons all amounts paid by the Association on behalf of such person, whether for indemnity, covered policy benefits and services, defense, or otherwise:

(a) any Insured whose net worth exceeds $50 million on December 31 of the year immediately preceding the date the insurer becomes an Insolvent insurer; provided that an Insured's net worth on such date shall be deemed to include the aggregate net worth of the Insured and all of its subsidiaries and affiliates as calculated on a consolidated basis;[12]

(b) The Association may also, at its sole discretion and without assumption of any ongoing duty to do so, pay any workers' compensation claims, personal injury protection claims, no-fault claims, any third-party claims, Cybersecurity insurance claims, or any other claims for ongoing medical payments to third-party claimants or their providers on behalf of a high net worth Insured as defined in section 4 (8)(b)(iv) and (v). In that case, the Association may recover from the high net worth Insured under this section all amounts paid on its behalf, all allocated claim adjustment expenses related to such claims, the Association's attorney's fees, and all court costs in any action necessary to collect the full amount of the Association's reimbursements under this section; and

[12] Net worth limits are a state-specific policy decision. This model includes a pay-and-recover approach, under which the Association may seek reimbursement from a high-net-worth claimant if it paid a Covered claim to that claimant.

(c) any person who is an Affiliate of the Insolvent insurer.

(3) The Association and any Association similar to the Association in another state shall be recognized as Claimants in the liquidation of an Insolvent insurer for any amounts paid by them on Covered claims obligations as determined under this Act or similar laws in other states and shall receive dividends and any other distributions at the priority set forth in [insert citation to the liquidation statute]. The receiver, liquidator, or statutory successor of an Insolvent insurer shall be bound by determinations of Covered claim eligibility under this Act and by settlements of 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 Act 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.

(4) The Association shall periodically file with the receiver or liquidator of the Insolvent insurer statements of the Covered claims paid by the Association and estimates of anticipated claims on the Association which shall preserve the rights of the Association against the assets of the Insolvent insurer.

Section 12. Exhaustion of Other Coverage

(1) Any person having a claim under an insurance policy, whether or not it is a policy issued by a Member insurer, and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the Covered claim against the Association, shall be required first to exhaust all coverage provided by any such policy. Any amount payable on a Covered claim under this Act shall be reduced by the full applicable limits stated in such other insurance policy and the Association shall receive a full credit for such stated limits, or, where there are no applicable stated limits, the claim shall be reduced by the total recovery. However, no person shall be required to exhaust any right under the policy of an Insolvent insurer.

(a) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the Insolvent insurer that gives rise to the Covered claim shall be considered to be a claim arising from the same facts, injury, or loss that gave rise to the Covered claim against the Association.

(b) A claim under an insurance policy shall also include, for purposes of this section:

(i) a claim against a health maintenance organization, a hospital plan corporation, or a professional health service corporation; and

(ii) any amount payable by or on behalf of a Self-insurer.

(c) To the extent that the Association's obligation is reduced by the application of this section, the liability of the person insured by the Insolvent insurer's policy for the claim shall be reduced in the same amount.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the Association of the place of residence of the Insured except that if it is a first-party claim for damage to property with a permanent location, they shall seek recovery first from the Association of the location of the property, and if it is a workers' compensation claim, they shall seek recovery first from the Association of the residence of the Claimant. Any recovery under this Act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(3) Except to the extent that the Claimant has a contractual right to claim defense under an insurance policy issued by another insurer, nothing in this section shall relieve the Association of the duty to defend under the policy issued by the Insolvent insurer. This duty shall, however, be limited by any other limitation on the duty to defend embodied in this Act.

Section 13. Insolvency Monitoring and Mitigating

To aid in monitoring and mitigating the impact of insurer insolvencies and facilitating their orderly administration, the board of directors, upon majority vote, may:

(1) make recommendations to the Commissioner for monitoring and mitigating the impact of insurer insolvencies and facilitating their orderly administration.

(2) make reports and recommendations to the Commissioner on matters related to improving or enhancing regulation for solvency, liquidation, rehabilitation, or conservation.

(3) at the conclusion of any insurer insolvency in which the Association was obligated to pay Covered claims, prepare a report on the history of such insolvency and recommendations to improve future insolvency response, based on the information available to the Association and submit such report to the Commissioner.

(4) collaborate with receivers, liquidators, the National Association of Insurance Commissioners, national organizations including the National Conference of Insurance Guaranty Funds, and their affiliates, subsidiaries, and successors, as well as other guaranty associations and similar organizations, to coordinate efforts for monitoring and mitigating the impact of insurer insolvencies and facilitating their orderly administration.

(5) reports and recommendations provided under this section shall not be considered public documents.

Section 14. Tax Exemption

The Association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Section 15. Recognition of Assessments in Rates[13]

[Alternative 1

(1) Except as provided in subsection (4), each Member insurer shall annually recoup assessments it remitted in preceding years under section 7. The recoupment shall be by means of a policyholder surcharge on premiums charged for all kinds of insurance in the accounts assessed. The surcharge shall be at a uniform percentage rate determined annually by the Commissioner that is reasonably calculated to recoup the assessment remitted by the insurer, less any amounts returned to the Member insurer by the Association. Changes in this rate shall be effective no sooner than 180 days after insurers have received notice of the changed rate.

(2) If a Member insurer fails to recoup the entire amount of the assessment in the first year under this section, it may repeat the surcharge procedure in succeeding years until the assessment is fully recouped or a de minimis amount remains uncollected. Any such de minimis amount shall be collected as provided in subsection (4) of this section. If a Member insurer collects excess surcharges, the insurer shall remit the excess amount to the Association, and the excess amount shall be applied to reduce future assessments in the appropriate account.

(3) The amount and nature of any surcharge shall be separately stated on either a billing or policy declaration sent to an Insured. The surcharge shall not be considered premium for any purpose, including the [insert all appropriate taxes] or agents' commission.

(4) A Member insurer may elect not to collect the surcharge from its Insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. In that case, the Member insurer may recoup the assessment through its rates, provided that:

(a) The Member insurer shall be obligated to remit the amount of surcharge not collected by election under this subsection; and

[13] States may choose how they wish to allow member insurers to recoup assessments paid by selecting one of three alternatives for section 15.

(b) The last sentence in subsection (3) above shall not apply.

(5) In determining the rate under subsection (1) for the first year of recoupment under this section, under rules prescribed by the Commissioner, the Commissioner shall provide for the recoupment in that year, or in such reasonable period as the Commissioner may determine, of any assessments that have not been recouped as of that year. Member insurers shall not be required to recoup assessments through surcharges under this section until 180 days after this section takes effect.]

[Alternative 2

(1) Notwithstanding any provision of [insert citation to relevant tax and insurance codes] to the contrary, a Member insurer may offset against its [insert all appropriate tax codes] liability the entire amount of the assessment imposed under this Act at a rate of [insert #] percent per year for [insert # of years] successive years following the date of assessment. If the assessment is not fully recovered over the [insert # of years] period, the remaining unrecovered assessment may be claimed for subsequent calendar years until fully recovered.

(2) Any tax credit under this section shall, for the purposes of section [insert citation to retaliatory tax statute] be treated as a tax paid both under the tax laws of this state and under the laws of any other state or country.

(3) If a Member insurer ceases doing business in this state, any uncredited assessment may be credited against its [insert all appropriate taxes] during the year it ceases doing business in this state.

(4) Any sums that are acquired by refund from the Association by Member insurers and that have been credited against [insert all appropriate taxes], as provided in this section, shall be paid by Member insurers to this state as required by the department. The Association shall notify the department of insurance that the refunds have been made.]

[Alternative 3

The rates and premiums charged for insurance policies to which this Act applies may 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. Rates shall not be deemed excessive because they contain an additional amount reasonably calculated to recoup all assessments paid by the Member insurer.]

Section 16. Immunity

There shall be no liability on the part of, and no cause of action of any nature shall arise against any Member insurer, the Association or its agents or employees, the board of directors, or any person serving as a representative of any director, or the Commissioner or their representatives for any action taken or any failure to act in the performance of their powers and duties under this Act.

Section 17. Stay of Proceedings

All proceedings in which the Insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver by the Association in specific cases involving Covered claims, be stayed for six months and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the Association of all pending causes of action.

The liquidator, receiver, or statutory successor of an Insolvent insurer covered by this Act shall permit access by the board or its authorized representative to such of the Insolvent insurer's records which are necessary for the board in carrying out its functions under this Act with regard to Covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.