# INSURER RECEIVERSHIP MODEL ACT

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## ARTICLE I. GENERAL PROVISIONS

### Section 101. Construction and Purpose

A. This Act shall be cited as the Insurer Receivership Act.

B. This Act shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

C.


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Section 103. Persons Covered

The provisions of this Act shall be applied to:

A. All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future, and to all persons subject to examination by the commissioner;

B. All insurers who purport to do an insurance business in this state;

C. All insurers who have insureds resident in this state;

D. All other persons organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state;

E. All nonprofit service plans and all fraternal benefit societies and beneficial societies subject to [insert statute identification if desired];

F. All title insurance companies subject to [insert statute identification if desired];

G. All prepaid health care delivery plans [insert statute iden-2.4 (t).8 ( l(t).8 ( 2.5 (t)3.8 (ut ps)-2.5 (ir)-0.7

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F. “Department” means the Insurance Department of this state unless the context requires otherwise.

G. “Doing business” (including “doing insurance business” and the “business of insurance”) includes, but is not limited to, any of the following acts, whether effected by mail, electronic means, or otherwise:

(1) The issuance or delivery of contracts, certificates or binders of insurance, either to persons resident in or covering a risk located in this state;

(2) The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts;

(3) The collection of premiums, membership fees, assessments or other consideration for the contracts;

(4) The transaction of matters subsequent to execution of the contracts and arising out of them;

(5) Operating as an insurer under a license or certificate of authority issued by the


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L. “Good faith” means honesty in fact and intention, and in regard to the provisions of Article VI of this Act also requires the absence of information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent, together with the absence of knowledge regarding the imminence or pendency of any delinquency proceeding against the insurer.

M. “Guaranty association” means any mechanism mandated by [insert citation to guaranty association enabling acts] or a similar mechanism in another state, which is created for the payment of claims or continuation of policy obligations of financially impaired or insolvent insurers.

N. “Impaired” means that the insurer does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained by [cite states insurance statutes and regulations regarding minimum capital and surplus requirements] or has a total adjusted capital that is less than its Authorized Control Level Risk Based Capital (RBC) as defined in [cite to states enactments related to the RBC Model Act, Risk RBC For Health Organizations Model Act and any related regulations].

O. “Insolvency” or “insolvent” means the insurer is unable to pay its obligations when they are due or does not have admitted assets at least equal to all its liabilities or has a total adjusted capital that is less than its Mandatory Control Level RBC as defined in [cite to state’s enactments relat9i “i.5 (C)-1re d4 Ptt9i “i.5 (Ci4 (t)3.7.7 23)-3.8 (i.35o)-4 (r)-(i)-1 y1.5 (t)3. >-0.D [(r)Ad

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(b) An agreement that is subject to regulation under Section 19 of the Commodity Exchange Act (7 U.S.C. § 1, *et seq.*

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FF. “Transfer” shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, including a setoff, or with


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I. [Alternative 1] No person shall be allowed to intervene in any liquidation proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien or other claim of any kind. The claims procedure set forth in this Act constitutes the exclusive means for obtaining payment of claims from the liquidation estate. Upon application to and approval by the receivership court, any guaranty association or its designated representative may intervene as a party and appear and participate in any court proceeding concerning a liquidation proceeding against an insurer if the association is or may become liable to act as a result of the liquidation proceeding. Intervention by any guaranty association or its designated representative conferred under this subsection shall not constitute grounds to establish general personal jurisdiction by the courts of this state. The intervening guaranty association or its designated representative shall be subject to the receivership court's jurisdiction for the limited purpose for which it intervenes.

[Alternative 2] No person shall be allowed to intervene in any liquidation proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien or other claim of any kind. The claims procedure set forth in this Act constitutes the exclusive means for obtaining payment of claims from the liquidation estate. Any guaranty association or its designated representative may intervene as a party as a matter of right and otherwise appear and participate in any court proceeding concerning a liquidation proceeding against an insurer if the association is or may become liable to act as a result of the liquidation proceeding. Intervention by any guaranty association or its designated representative conferred under this subsection shall not constitute grounds to establish general personal jurisdiction by the courts of this state. The intervening guaranty association or its designated representative shall be subject to the receivership court's jurisdiction for the limited purpose for which it intervenes.

[Alternative 3] No person shall be allowed to intervene in any liquidation proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien or other claim of any kind. The claims procedure set forth in this Act constitutes the exclusive means for obtaining payment of claims from the liquidation estate.

Drafting Note: States may choose Alternative 1, 2 or 3 for Subsection I depending on the ability of guaranty associations to intervene in liquidation proceedings. Alternative 1 permits guaranty associations to intervene for a limited purpose upon application to and approval by the receivership court. Alternative 2 permits intervention by guaranty associations as a matter of right, upon application to and approval by the receivership court. Alternative 3 is silent as to guaranty associations and contains the same general prohibition on intervention in liquidation proceedings as Alternatives 1 and 2.

J. The foregoing provisions of this section notwithstanding, the provisions of this Act do not confer jurisdiction on the receivership court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a receivership proceeding under this Act except to the extent that the guaranty association has otherwise expressly consented to the jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that resolves its obligations to covered policyholders. The determination of any dispute with respect to the statutory coverage obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the guaranty association's state of domicile shall be binding and conclusive as to the guaranty association's claim in the liquidation proceeding.

K. Upon the request of the receiver the receivership court [or a chief administrative judge] may order that one judge hear all cases and controversies arising out of or related to the delinquency proceeding.


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(5) If an objection is timely filed, the receivership court may hold a hearing. If the receivership court approves the application and, upon a motion by the receiver,


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(8) Any right to cause the netting, liquidation, setoff, termination, acceleration or close out of obligations, or enforcement of any security agreement or ari7m1 (r)-6.- (t)1.6 ( e-2.5


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[Alternative 2] The provisions of this Act shall be applicable to proceedings instituted prior to the effective date of this Act. The provisions of this section shall not affect any final judgment or order entered by a court of competent jurisdiction prior to the effective date of this Act. Provided that claims against insurers under formal

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F. The receiver shall not be deemed a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Section 113. Unrecorded Obligations and Defenses Of Affiliates

A.


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Section 115. Immunity and Indemnification of the Receiver and Assistants

[Alternative 1]

A. For the purposes of this section, the persons entitled to immunity and indemnification, and those entitled to only immunity, as applicable, are:

(1) All present and former receivers responsible for the conduct of a delinquency proceeding under this Act;

(2)

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B. Receivership expenses other than those described in Subsection A shall be paid as follows:

(1) The receiver shall submit an application pursuant to Section 107 to the receivership court to approve:

(a) The terms of compensation of each special deputy or contractor where the total amount of the compensation is reasonably expected by the receiver for the duration of the delinquency proceeding to exceed an amount established by the receivership court; and

(b) Any other anticipated expense in excess of an amount established by the receivership court.

(2) The receiver may, as the receiver deems appropriate, submit an application to approve any compensation, anticipated expenses or incurred expenses not described in Paragraph (1).

(3) The receiver may pay as incurred any expenses not requiring receivership court approval and any expenses approved in the rehabilitation or liquidation order.

(4) The approval of expenses by the receivership court shall not prejudice the right of the receiver to seek any recovery, recoupment, disgorgement or reimbursement of fees based on contract or causes of action recognized in law or in equity.

C. On an annual or more frequent basis, the receiver shall submit to the receivership court a report summarizing the expenses incurred in the prior period.

D. Receivership court approval shall not be required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.

E. [Alternative 1] All expenses of receivership shall be paid from the assets of the insurer, except as provided in this subsection. In the event that the insurer does not have sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds out of any appropriation for the maintenance of the insurance department. Any amounts advanced shall be repaid to the commissioner out of the first available moneys of the insurer.

[Alternative 2] All expenses of receivership shall be paid from the assets of the insurer, except as provided in this subsection. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds from the account established under Subsection 804C. Any amounts advanced shall be repaid to the account out of the first available moneys of the insurer.

Drafting Note: States may utilize the term “application”, “motion” or such other term that is considered appropriate in their state.

Drafting Note: Alternative 2 is only appropriate if Alternative 1 to Section 804 is enacted.


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(4) The order shall not continue in effect beyond the time and date set for the return of summons, unless the receivership court shall expressly enter one or more orders extending the restraining order.

E. If no temporary restraining order is requested, the receivership court shall cause summons to be issued. The summons shall specify a return date not more than thirty (30) days after issuance and that an answer must be filed at or before the return date.

Section 203. Return of Summons and Summary Hearing

A. The receivership court shall hold a summary hearing at the time and date for the return of summons on a petition to commence a formal delinquency proceeding.

B. If a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, the receivership court shall:

(1) Continue the summary hearing not more than ten (10) days;

(2) Provide for alternative service of summons upon the person; and

(3) Extend any restraining order.

C. Upon a showing of good faith efforts to effect personal service upon a person who has failed to appear for a continued summary hearing, the receivership court shall order notice of the petition to commence a formal delinquency proceeding to be published. The order and notice shall specify a return date not less than ten (10) nor more than twenty (20) days after the publication and that the restraining order has been extended to the continued hearing date.

D. If a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons, the receivership court shall enter judgment in favor of the commissioner against that person.

E. (1)


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E. The receivership court or any appellate court to which the matter is presented may condition any relief it grants under Subsection D on the filing of a bond or other appropriate security with the receivership court.

F. The provisions of Section 115 shall apply to all acts taken during the pendency of an appeal regardless of its ultimate disposition.

G. The reversal or modification on appeal of an order of conservation, rehabilitation or liquidation does not affect the validity of the acts of the receiver pursuant to the order unless the order is stayed pending appeal.

Section 206. Confidentiality

A. In all proceedings and judicial reviews under Section 201, all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential, and all papers filed with the clerk of the [insert proper court] court shall be held by the clerk in a confidential file as permitted by law, except to the extent necessary to obtain compliance with any order entered in connection with the proceedings, unless and until:

(1) The [insert proper court] court, after hearing argument in chambers, shall order otherwise;

(2) The insurer requests that the matter be made public; or

(3) The commissioner applies for an order under Section 207.

B. The commissioner, conservator or rehabilitator may share documents, materials or other information in the possession, custody or control of the department, pertaining to an insurer that is the subject of a delinquency proceeding under this Act, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal ast stdse-6.8 ( f)-6.5 sn, iern,itl,


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D. The confidentiality obligations imposed by this section shall end upon the entry of an order of liquidation against the insurer, unless otherwise agreed to by the parties or pursuant to an order of the receivership court. Any continuation of confidentiality as provided in Subsection B shall not apply to any insurer records necessary for the guaranty associations to discharge their statutory responsibilities.

E. No waiver of any applicable privilege or claim of confidentiality shall occur as a result of any disclosure, or any sharing of documents, materials or other information, made pursuant to this section.

Section 207. Grounds for Conservation, Rehabilitation or Liquidation

The commissioner may file in the [insert proper court] court of this state a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of conservation, rehabilitation or liquidation on any one or more of the following grounds:

A. The insurer is impaired;

B. The insurer is insolvent;

C. The insurer is about to become insolvent. An insurer is about to become insolvent for purposes of this section if it is reasonably anticipated that the insurer will not have liquid assets to meet its next ninety (90) days' current obligations;

D. The insurer has neglected or refused to comply with an order of the commissioner to make good within the time prescribed by law any deficiency, whenever its capital and minimum required surplus, if a stock company, or its surplus, if a company other than stock, has become impaired;

E. The insurer, its parent company, its subsidiaries or its affiliates have converted, wasted or concealed property of the insurer, or otherwise improperly disposed of, dissipated, used, released, transferred, sold, assigned, hypothecated or removed the property of the insurer;

F. The insurer is in such condition that it could not meet the requirements for organization and authorization as required by law, except as to the amount of the original surplus required of a stock company under Section [insert proper section], and except as to the amount of the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;

G. The insurer, its parent company, its subsidiaries or its affiliates have concealed, removed, altered, destroyed or failed to establish and maintain books, records, documents, accounts, vouchers and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Section [insert citation to examination authority statute in state's general insurance laws], or has failed to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;

H. At any time after the issuance of an order under Section [insert citation to corrective orders

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receiver, with the approval of the receivership court in accordance with Section 116, and shall be paid out of the property of the insurer. If the receiver, in his or her sole discretion, deems it


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policies, insurance and reinsurance contracts, surety bonds or surety undertakings to a solvent assuming insurer. The conservator shall have all the powers of the directors, officers and managers of the insurer, whose authority shall be suspended, except as redelegated by the

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C. Upon a determination by the commissioner or a receiver that the insurer should be liquidated, the commissioner or receiver or his or her designated representative shall participate in cooperative efforts with the potentially obligated guaranty associations to ensure that an orderly transition to liquidation occurs. The conservator shall make available to the guaranty associations the information necessary to discharge their responsibilities upon becoming statutorily obligated. To the extent that information is available, or as it becomes available, the conservator shall provide appropriate information to guaranty associations in the states where the insurer transacted business.

D. Appropriate information as referred to in this section at a minimum includes the following for lines of business written by the insurer (whether covered or not covered by guaranty associations): a general description of the different types of business written or assumed by the insurer; claim counts and policy counts by state and by line of business; claim and policy reserves; account values; cash surrender values; policy loans; interest crediting history; premiums and mode of payment; unpaid claims and amounts; sample policies and endorsements; listing of different locations of claim files; if third party administrators were used, copies of executed contracts and a description of the contractual arrangements; and information concerning claims in litigation or dispute, including a listing of claims with assigned defense counsel for those claims going to trial in the near future after a possible liquidation date. Appropriate information also includes information concerning states in which the insurer is or was licensed and time periods for which th(n w)-0.9 (h)5.8 (i)-0.6


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rehabilitation plan, unless the receivership court, for good cause shown, shall extend the moratorium.

B. Once a plan has been filed, any party in interest may object to the plan.

C. A plan shall:

(1) Except as provided at Subsection E, provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;

(2) Provide adequate means for the plan's implementation;

(3) Contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of the nature and history of the insurer, the condition of the insurer's books and records and the nature of the plan; and

(4) Provide for the disposition of the books, records, documents and other information relevant to the duties and obligations covered by the plan.

D.


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Section 404. Termination of Rehabilitation

A. Whenever the rehabilitator believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the rehabilitator may move for an order of liquidation. In accordance with Section 405, the rehabilitator or the rehabilitator's designated representative shall coordinate with the guaranty associations that may become liable as a result of the liquidation and any national association of guaranty associations to plan for transition to liquidation.

B. The protection of the interests of insureds, claimants and the public requires the timely performance of all insurance policy obligations; therefore, if the payment of policy obligations is suspended in substantial part for a period of six (6) months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under Section 403, the rehabilitator shall petition the receivership court for an order of liquidation or seek an order, on good cause shown, for a longer suspension period.

C. The rehabilitator or the directors of the insurer may at any time petition the receivership court for, or the receivership court on its own motion may enter, an order terminating rehabilitation of an insurer. Subject to the provisions of Section 901, if the receivership court finds that rehabilitation has been accomplished and that grounds for rehabilitation under Section 207 no longer exist, it shall order that the insurer be restored to title and possession of its property and the control of the business.

Section 405. Coordination with Guaranty Associations and Orderly Transition to Liquidation

A. Upon the entry of an order of rehabilitation or as soon thereafter as is practical, the rehabilitator or his or her designated representative shall consult with the potentially obligated guaranty associations or their designated representatives to determine the extent to which the guaranty associations will be impacted by or may assist in the efforts to rehabilitate the insurer, and shall also provide appropriate information to the guaranty associations to allow them to evaluate and discharge their statutory responsibilities. The rehabilitator shall begin appropriate contingency planning and organizing so that an orderly transition to liquidation occurs, if liquidation is necessary. An orderly transition to liquidation requires, among other things, that: (i) the rehabilitator to the fullest extent possible reserve sufficient assets to continue to meet obligations under insurance policies of the insolvent insurer until the guaranty associations are triggered, and (ii) the rehabilitator shall conduct affairs in such a way and cooperate as necessary with the guaranty associations that may become liable as a result of the insolvency of the insurer to ensure that the guaranty associations are provided with appropriate information, along with necessary

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liquidation shall continue in force as provided in this section, unless further extended by the receiver with the approval of the receivership court, until the earlier of:

(1) Thirty (30) days from the date of entry of the liquidation order;

(2) The date of expiration of the policy coverage;

(3) The date the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy;

(4) The date the liquidator has effected a transfer of the policy obligation pursuant to Section 504A(5); or

(5) The date proposed by the liquidator and approved by the receivership court to cancel coverage.

Drafting Note: The provision in Paragraph (5) is designed to allow for possible immediate cancellation of policies in the event there is no guaranty fund coverage.

C. An order of liquidation under Section 501 shall terminate coverages at the time specified in Subsections A and B for purposes of any other statute.

D. Policies of life, disability income, long term care or health insurance or annuities covered by a guaranty association or portions of such policies covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy (including any terms restructured pursuant to a court-approved rehabilitation plan) to the extent necessary to

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B. Upon an application to sell the corporate entity or charter, with notice as prescribed in this Act, the receivership court may enter an order;

(1) Separating the corporate entity or charter, together with any of its licenses to do business and such assets as the liquidator deems appropriate to the transaction, from the remaining estate in liquidation and all of its assets and the claims or interests of all claimants, creditors, policyholders and stockholders;

(2) Canceling all outstanding stock and other securities of, and other equity interests in, the corporate entity or charter, provided that the cancellation shall not affect any claim against the estate by holders of the equity interests;

(3) Authorizing the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the corporate entity or charter; and

(4) Authorizing the sale of the corporate entity or charter, together with any of its licenses to do business and such general assets as the liquidator deems appropriate to the transaction, free and clear from the claims or interest of all claimants, creditors, policyholders and stockholders.

C. The sale of the corporate entity or charter may be made in the manner and on the terms and conditions applied for by the liquidator and ordered by the receivership court. Any sale shall be subject to the domiciliary state's laws regarding acquisition of an insurer [refer to state's Insurance Holding Company law or other law regarding the transfer of control of insurers]. The proceeds from the sale of the corporate entity or charter shall become a part of the property of the estate in liquidation, and the then separate corporate entity or charter, together with any of its licenses to do business and such assets as the liquidator deems appropriate to the transaction, shall thereafter be free and clear from the claims or interest of all claimants, creditors, policyholders and stockholders of the insurer in liquidation. The court shall be deemed to have broad powers to effect the disposition of corporate entities and their charters including, without limiting the foregoing, reorganizations and conversions thereof.

D. This section shall be liberally construed to accomplish its purposes to provide an expeditious and effective procedure to realize the maximum proceeds possible from the sale of a corporate entity or charter separated from an estate in liquidation and to ensure that the purchasers receive clear and marketable titles.

E. If permission to sell the corporate entity or charter is not granted prior to discharge of the liquidator, in accordance with this section or otherwise with receivership wt5 (b)-0.6 (l)-1.5 (e)-5 E.


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(6) Subject to Subsection D, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the estate at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have the power to execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(7) To borrow money on the security of the property of the estate or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;

(8) To enter into such contracts as are necessary to carry out the order to liquidate, and, subject to the provisions of Section 114, to assume or reject any executory contract or unexpired lease to which the insurer is a party;

(9) To continue to prosecute and to institute in the name of the insurer or in the liquidator's own name suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under Section 503, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party;

(10) To prosecute or assert with exclusive standing any action that may exist on behalf of the creditors, members, policyholders or shareholders of the insurers9 -166 ( )-5.5 (t)0.7 (h)-0


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C. Any agent failing to provide information to the liquidator as required in Subsection B may be subject to payment of a penalty of not more than $1,000, in addition, the agent's license may be suspended after a hearing held by the commissioner.

D. Notwithstanding an agent's property interest, if any, in the expiration of the policy, the liquidator shall have the exclusive power to determine whether, and under what terms, to cancel or transfer the policy.

## ARTICLE VI. ASSET RECOVERY

### Section 601. Turnover of Assets

A. If the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to the person a written demand for immediate delivery of the funds or property, referencing this section by number, referencing the court and docket number of the receivership action, and notifying the person that any claim of right to the funds or property by the person shall be presented to the receivership court within twenty (20) days after the date of the written demand. Any person who holds funds or other property belonging to an entity subject to an order of receivership under this Act shall


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Section 607. Liability of Transferee

A. Except as otherwise provided in this section, to the extent that the receiver obtains an order pursuant to Section 601, or avoids a transfer under Sections 602, 603, 604, 605 or 606, the receiver may recover the property transferred, or the value of the property, from:


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Section 608. Claims of Holders of Void or Voidable Rights

A. The receiver may disallow all claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under this Act, unless the creditor surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the receiver within thirty (30) days from the date of the entering of the final judgment, except that the receivership court may allow further time if there is an appeal or other continuation of the proceeding.

B. A claim allowable under Subsection A by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment or encumbrance, may be filed as an excused late filing under Subsection 701B if filed within thirty (30) days from the date of the avoidance, or within the further time allowed by the receivership court under Subsection A.

Section 609. Setoffs

A. Mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this Act, shall be set off and the balance only shall be allowed or paid, except as provided in Subsection B, Section 612 and Section 613. Obligations arising out of the termination of life, disability income or long term care reinsurance contracts pursuant to Section 612 may be set off against other debts and credits arising out of contracts between the insurer and the reinsurer.

B. No setoff shall be allowed after the commencement of a delinquency proceeding under this Act in favor of any person if:

(1) The claim against the insurer is disallowed;

(2) The claim against the insurer was purchased by or transferred to the person on or after the filing of the receivership petition or within 120 days preceding the filing of the receivership petition;

(3) The obligation of the insurer is owed to an affiliate or entity other than the person, absent written assignment of the obligation made more than 120 days before the filing of the petition for receivership;

(4) The obligation of the person is owed to an affiliate or entity other than the insurer, absent written assignment of the obligation made more than 120 days before the filing of the petition for receivership;

(5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution;

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D. After levy of assessment under Subsection B, the receiver shall petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment therefore should not be entered.

E. At least twenty (20) days before the return day of the order, the receiver shall give notice of the order to show cause by publication or by first class mail to each member liable on the assessment mailed to the member's last known address as it appears on the insurer's records or such other method of notification as the receivership court may direct. Failure of the member or subscriber to receive the notice of the assessment or of the order, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

F. If a member does not appear and serve duly verified objections upon the receiver on or before the return day of the order to show cause under Subsection D, the receivership court shall make an order adjudging the member liable for the amount of the assessment against the member pursuant to Subsection D together with costs, and the receiver shall have a judgment against the member therefore.

G. If on or before the return day, the member appears and serves duly verified objections upon the receiver, the receivership court may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant.

H. The receiver may enforce any order or collect any judgment under Subsection F by any lawful means.

I. Any assessment of a subscriber or member of an insurer made by the receiver pursuant to the order of receivership court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the receiver under this section shall be *prima facie* correct.

J. Any claim filed by an assessee who fails to pay an assessment, after the conclusion of any legal action by the assessee objecting to the assessment, shall be deemed a late filed claim under Section 801.

Drafting Note: This section may be eliminated if the state has no insurers issuing assessable policies.

Section 611. Reinsurer's Liability

A. Except as otherwise provided in this Act, the amount recoverable by the receiver from reinsurers shall not be reduced as a result of a delinquency proceeding with a finding of insolvency, regardless of any provision in the reinsurance contract or other agreement. No agreement, written, oral or otherwise shall be enforceable to the extent it is in conflict, or not in strict compliance, with this section. Except as expressly provided herein, no other person whether as a creditor, third party beneficiary or otherwise shall have a direct right to reinsurance proceeds from any reinsurer of the insolvent insurer on the basis of any written or oral agreement, or pursuant to any action or cause of action seeking any equitable or legal remedy. This section shall apply to all the insurer's reinsurance contracts including but not limited to treaty reinsurance, quota share reinsurance, facultative reinsurance, or fronting or captive reinsurance arrangements.

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C. (1) At any time within 180 days of the coverage date, a guaranty association covering life, disability income or long term care insurance policies or annuities, in whole or in part, may elect to assume the rights and obligations of the ceding insurer that relate to the policies or annuities covered, in whole or in part, by the guaranty association, in each case under any one or more reinsurance contracts between the insolvent insurer and its reinsurers selected by the guaranty association. Any such assumption shall be effective as of the coverage date. The election shall be effected by the guaranty association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(2) To facilitate the earliest practicable decision about whether to assume any of the


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H. The provisions of this section shall, to the extent provided in this Act, supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver of the insolvent insurer or any other person. The receiver shall remain

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(b)


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(2) If a majority of the panel determines that it is unable to derive a commercially reasonable and actuarially sound commutation based upon the submissions of the parties and, if applicable, the report and recommendation of the expert retained in accordance with Subsection F, the panel shall be entitled to issue an award declining commutation between the parties for a period not to exceed two (2) years. Following expiration of the two-year period allowable under this paragraph, the liquidator shall be entitled to again invoke arbitration in accordance with Subsection B, in which event the provisions of Subsections B through I will be applied to the renewed proceeding, except that the panel shall be obliged to issue an award under Paragraph (1).

I. Once an award is issued, the liquidator shall promptly submit the award to the receivership court for confirmation.

J. Within thirty (30) days of confirmation of the award by the receivership court, the reinsurer shall give notice to the receiver that it:

(1) Will commute its liabilities to the insurer for the amount of the award in return for a full and complete release of all liabilities between the parties, whether past, present or future; or

(2) Will not commute its liabilities to the insurer, in which case the reinsurer shall establish and maintain in accordance with Section 615 a Reinsurance Recoverable Trust in the amount of 102 percent of the award. The reinsurer shall pay the costs and fees associated with establishing and maintaining the trust established under this subsection.

K. If the reinsurer notifies the liquidator that it will commute its liabilities pursuant to Subsection J(1), the liquidator shall have thirty (30) days to:

(1) Tender to the reinsurer a proposed commutation and release agreement providing for a full and complete release of all liabilities between the parties, whether past, present or future, which agreement shall require that the reinsurer effect payment of the commutation amount within fourteen (14) days from the date of consummation of the agreement; or

(2) Reject the commutation in writing, subject to receivership court approval, in which event the reinsurer shall be obliged to establish and g3 (hd)-0.


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N. A commutation provision in a reinsurance agreement is not effective if it is demonstrated to the receivership court that the provision was entered into in contemplation of the insolvency of one or more of the parties. A contractual commutation provision entered into within one year of the liquidation order of the insurer shall be rebuttably presumed to have been entered into in contemplation of insolvency.

Section 615. Reinsurance Recoverable Trust Provisions

A. As used in this section:

(1) “Beneficiary” means the domiciliary insurance commissioner, as liquidator of the insurer for whose sole benefit a Reinsurance Recoverable Trust is established.

(2) “Grantor” means the reinsurer who has established a Reinsurance Recoverable Trust for the sole benefit of the beneficiary.

(3)

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(e) If the beneficiary has complied with any different or other terms and conditions mutually agreed to by the beneficiary and the grantor in the trust agreement;

(4) Require the trustee to:

(a) Receive assets and hold all assets at the trustee's office in the United States in a safe place;

(b) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; and

(d) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account;

(5) Be made subject to and governed by the laws of this state;

(6) Prohibit the invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;

(7) Provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith;

(8) Provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that a resignation or removal shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee;

(9) Provide that the grantor shall have the full and unqualified right to vote any shares of stock in the trust account. Subject to other provisions of this section, any interest or dividends paid on shares of stock or other obligations in the trust account shall remain in the trust;

(10) Specify categories of investments reasonably acceptable to the beneficiary and authorize the trustee to invest funds and to accept substitutions, by the grantor, that the trustee determines are at least equal in market value to the assets withdrawn provided that no investment or substitution shall be made without prior approval from the beneficiary, which shall not be unreasonably or arbitrarily withheld;


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(11) Provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets;

(12) Specify the types of assets that may be included in the trust account, which shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. bank and payable in U.S. dollars, and investments permitted by this state's insurance law or any combination of the above, provided investments in or issued by any entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. Assets deposited .2 satah6.7 (p)-1.6 (o)-2

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F. A Reinsurance Recoverable Trust shall terminate upon the earlier of

(1) The receivership court approval of a voluntary commutation between the grantor and the beneficiary pursuant to Section 614A;

(2) The mutual agreement of the grantor and the beneficiary; or

(3) A finding by the receivership court that the grantor has discharged its liabilities to the beneficiary.

G. Upon termination of the Reinsurance Recoverable Trust, all assets not previously withdrawn by the beneficiary, pursuant to Subsection B(3) of this section, shall, with written approval of the beneficiary, be delivered to the grantor.

ARTICLE VII. CLAIMS

Section 701. Filing of Claims

A.


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D. The liquidator may petition the receivership court, subject to Section 107, to set a date certain after which no further claims may be filed, notwithstanding any other provision of this Act.

Section 702. Proof of Claim

A.

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K. The liquidator is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class. If there are insufficient assets to justify processing all claims for any class listed in Section 801, the liquidator shall report the facts to the receivership court and make appropriate recommendations for handling the remainder of the claims.

L. Any claim of a lessor for damages resulting from the termination of a lease of real property shall be disallowed to the extent the claim exceeds:

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(6) To the extent that a guaranty association has made a payment relating to a claim


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G.

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(a) Payments made by the insured pursuant to a deductible arrangement under which the insurer has no obligation to pay or advance the amount of the deductible on behalf of the insured or a self-insurance arrangement under which the insurer has no payment obligation for the obligation of the self-insured;

(b) Retrospectively rated premium payments; or

(c) Reinsurance claim payments made by a captive reinsurer or other reinsurer affiliated with or funded by the insured or affiliated with the insurer.

(3) "Loss reimbursement claim" means any claim on a loss reimbursement policy that has been made against the estate, or that was previously paid by the insurer, to the extent that it is subject to an insured's loss reimbursement obligation. A loss reimbursement claim includes any loss adjustment expenses that are subject to reimbursement by the terms of the policy.

(4) "Loss reimbursement collateral" means any cash, letters of credit, surety bond or any other form of security provided by the insured to secure its loss reimbursement obligations, regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer, and regardless of whether the collateral also secures other obligations of the insured.

(5) "Uncovered loss reimbursement claim" means a loss reimbursement claim that is not defined as a covered claim under the relevant guaranty association statute.

(6) "Other secured obligations" means any obligations, such as reinsurance or retrospective


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an insured, it shall notify all other guaranty associations that have paid loss reimbursement claims on behalf of the same insured. Amounts collected by a guaranty association pursuant to this paragraph shall be treated as in accordance with subparagraph C(3) of this section. The expenses incurred by a guaranty association in pursuing reimbursement shall not be permitted as a claim in the delinquency proceeding at any priority; however, a guaranty association may net the expenses incurred in collecting any reimbursement against that reimbursement.

G. The receiver is entitled to recover through billings to the insured or from loss reimbursement collateral all reasonable expenses that the receiver or guaranty associations incur in fulfilling their responsibilities under this Section. All such deductions or charges shall be in addition to the insured's obligation to reimburse claims and related expenses and shall not diminish the rights of claimants.

H. [OPTIONAL] The provisions of this section shall be applied in all receiverships pending at the time of enactment.

Drafting Note: Attention should be drawn to whether Section 712 is adopted with IRMA or as a stand-alone. If it is adopted with IRMA, then the provisions in Section 111 of IRMA may apply. States may wish for this particular section to not apply retroactively even if electing to have the rest of IRMA so .3 (h)-0.7 ( fS)1.3 (1)1.3 ( o)5stheh I(i)3.3 (s)-1.3 (h)-0.7 ( f)-0.6 (o)1.3 (r)-0.7 (ave)-1 (al)-1.5 (i)-1.7


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(d) The fees and mileage payable to witnesses;

(e)

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Drafting Note:


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(c) Any necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e)


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association and the liquidator; indemnity payments on covered claims and, in the case of a life, health and annuity guaranty association, all claims as a creditor of the impaired or insolvent insurer for all payments of and liabilities incurred on behalf of covered claims or covered obligations of the insurer and for the funds needed to reinsure those obligations with a solvent insurer.

Notwithstanding any other provision of this Act, the following claims shall be excluded from Class 3 priority

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B. In determining the percentage of distributions to be paid on these claims, the liquidator may consider the estimated value of the insurer's property (including estimated reinsurance recoverables in connection with the insurer's estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses) and the estimated value of the insurer's liabilities (including estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses).

C. Distribution of property in kind may be made tc-1.6 ( b)Ml1-6.6 ((e)-5.3 (x)02.519 0 Td [(D)1.9

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(3) Where sufficient distributable assets are available, amounts advanced need not be limited to the claims and expenses paid to date by the guaranty associations. However, the liquidator shall not distribute distributable assets to the guaranty associations in excess of the anticipated entire claims of the guaranty associations falling within the priority classes of claims established in Subsections 801B and C.

B. Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually thereafter, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or report that the liquidator has determined that there are no distributable assets at that time based on financial reporting as required in Section 117. The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.

C. Within sixty (60) days after approval by the receivership court of the applications in Subsection B, the liquidator shall make any early access payments to the affected guaranty associations as indicated in the approved application.

D. Notice of each application for early access payments, or of any report required pursuant to this section, shall be given in accordance with Section 107 to the guaranty associations that may have obligations arising from the liquidation. Notwithstanding the provisions of Section 107, the liquidator shall provide these guaranty associations with at least thirty (30) days actual notice of the filing of the application with a complete copy of the application prior to any action by the receivership court. Any guaranty association that may have obligations arising in connection with the liquidation shall have:

(1) The right to request additional information from the liquidator, who shall not unreasonably deny such request; and

(2) The right to object as provided in Section 107 to any part of each application or to any report filed by the liquidator pursuant to this section.

E. In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time, provide at a minimum the following:

(1) To the extent necessary and appropriate, the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims falling within the priority classes of claims established in Section 801B and C;

(2) The calculation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and

(3) The most recent financial information filed with the National Association of Insurance Commissioners by the liquidator.


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F. Each guaranty association that receives any payments pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay claims of secured creditors and claims falling within the priority classes of claims established in Section 801A, B or C. No bond shall be required of any guaranty association.

G. Without the consent of the affected guaranty associations or an order of the receivership court, the liquidator may not offset the amount to be disbursed to any guaranty association by the amount of any special deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received such deposit or asset.

Section 804. Unclaimed and Withheld Funds

[Alternative 1]

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D. Any advance to a receivership estate under Subsection C(2) may be treated as a claim under Section 801 as may be agreed at the time the advance is made or, in the absence of such agreement, in a priority determined to be appropriate by the receivership court.

E. If the commissioner determines at any time that the funds in the account exceed the amount required, the commissioner may transfer the funds or any part thereof to the State Treasurer, and the transferred funds shall be deposited into the state general fund.

[Alternative 2]

If any funds of the receivership estate remain unclaimed after the final distribution under Section 802, the funds shall be handled in accordance with [cite to state's unclaimed property laws].

ARTICLE IX. DISCHARGE

Section 901. Condition on Release from Delinquency Proceedings

Until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all the payments and expenses, shall have been repaid to the guaranty associations unless otherwise provided in a plan approved by the guaranty association, an insurer that is subject to any formal delinquency proceedings shall not:

A. Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

B.


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