Attachment Two

Comments for Oct. 14, 2014 Conf. Call

Receivership Model Law (E) Working Group
Division of Rehabilitation and Liquidation  
www.myfloridacfo.com/division/receiver

VIA EMAIL TO: JKoenigsman@naic.org

October 10, 2014

James Kennedy  
Chair, Receivership Model Law (E) Working Group  
Jane Koenigsman, NAIC Life/Health Financial Analysis Manager  
National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, MO 64108

Re: NAIC Receivership Model Law Working Group  
Critical Elements of Receivership Models  
Review of Life and Health Insurance Guaranty Association Model Act

Dear Chairman Kennedy and Ms. Koenigsman:

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, again appreciates the opportunity to provide comments as to which provisions of the Life and Health Insurance Guaranty Association Model Act should be considered “critical” for purposes of state uniformity. Our specific comments to the individual Model Act provisions are set out in the enclosed document.

As more fully explained during the Working Group’s recent conference call regarding the Insurer Receivership Model Act, Florida supports uniformity where appropriate and certainly supports a system whereby state receivership statutes are the same or substantially similar to the relevant model laws. With regard to the Life and Health Insurance Guaranty Association Model Act, we again found that a number of Model Act provisions directly conflict with Florida’s public records laws and therefore would not be acceptable in Florida. We also found that the extreme specificity of many of the Model Act requirements are contrary to Florida’s state court and other procedures.

As before, we will be available during the upcoming conference calls to discuss our comments as necessary.

Again, thank you for the opportunity to comment. If you have questions regarding Florida’s responses, please contact me at 850/413-4409.

Sincerely,

Mary Schwantes

Mary Schwantes • Director of Estate Management Deputy Receiver  
Florida Department of Financial Services • Division of Rehabilitation & Liquidation  
2020 Capital Circle SE, Ste 310 • Tallahassee, FL 32301 • Tel. 850-413-4409 • Fax 850-413-3992  
Email • mary.schwantes@myfloridacfo.com  
Affirmative Action • Equal Opportunity Employer
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**FL:** Florida, **IA:** Indiana, **Massachusetts:** Massachusetts, **NJ:** New Jersey, **NH:** New Hampshire, **NY:** New York, **NC:** North Carolina, **ND:** North Dakota, **OH:** Ohio, **PA:** Pennsylvania, **RI:** Rhode Island, **VT:** Vermont, **WA:** Washington, **DC:** District of Columbia, **Others:** Other states.
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<td>They are substantially identical. Although Florida marine charter (“60 vs. 180 days”), authority of DBC &amp; CFC is commission/owners (affirmative use) necessary to appropriately direct agency/commission &amp; however initial need to be able to modify provision of the Florida marine charter that are substantially identical.</td>
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<td>631.729</td>
<td>Although Florida marine charter (“60 vs. 180 days”), commission provisions have a substantive function and are bound in order to be adopted by the individual states.</td>
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<td>Although Florida marine charter (“60 vs. 180 days”), commission provisions have a substantive function and are bound in order to be adopted by the individual states.</td>
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<td>Although Florida marine charter (“60 vs. 180 days”), commission provisions have a substantive function and are bound in order to be adopted by the individual states.</td>
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<td>Although Florida marine charter (“60 vs. 180 days”), commission provisions have a substantive function and are bound in order to be adopted by the individual states.</td>
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September 25, 2014

James Kennedy  
Chair, Receivership Model Law (E) Working Group  
National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, MO  64108

RE:  Insurer Receivership Model Act  
Life and Health Insurance Guaranty Association Model Act

Dear Chairman Kennedy:

The American Council of Life Insurers (ACLI)\(^1\) appreciates this opportunity to comment on the Receivership Model Law Working Group’s request for the identification of the provisions of the Insurer Receivership Model Act (IRMA) and the Life and Health Insurance Guaranty Association Model Act (G/A Model Act) that should be considered “critical” for state uniformity.

With regard to the IRMA, we believe that the existing state-based system of receivership laws, while not entirely uniform, has nonetheless handled insurer rehabilitations and liquidations efficiently and effectively over the last couple of decades. The only provisions of the IRMA that we believe need to be uniformly adopted are Section 711 (which allows for the netting of qualified financial contracts) and Section 612 (which contains important life and health reinsurance provisions). Section 711 has already been enacted in 21 states (where the majority of our members are domiciled) and we plan to promote Section 612 in certain targeted states as well. As a result, we do not see the need for the adoption by the NAIC or the states of a truncated version of the IRMA (which presumably would include only those sections or provisions that are both critical/essential and non-controversial) throughout the country.

With regard to the G/A Model Act, the ACLI and NOLHGA have worked closely together over the past several years, and will continue to do so, in order to get it adopted in as many states as possible. So far, 41 states have guaranty association laws that are substantially similar with the Model. Given the success that we have achieved in the states, we do not believe that it is necessary to identify which provisions of the G/A Model Act should be considered “critical” for uniformity purposes.

Thank you again for the opportunity to comment on this issue. If you have any questions, please feel free to contact me at (202) 624-2135.

\(^1\) The ACLI is a Washington, DC-based trade association with approximately 300 member companies operating in the U.S. and abroad. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90% of industry assets and premiums.
Sincerely,

Wayne A. Mehlman
Senior Counsel, Insurance Regulation

cc: Jane Koenigsman, NAIC Life/Health Financial Analysis Manager
Receivership Model Law (E) Working Group
October 10, 2014

James Kennedy (TX), Chair Receivership Model Law (E) Working Group (“RMLWG”)  
Jim Mumford (IA), Chair of Receivership and Insolvency (E) Task Force (“RITF”)  
National Association of Insurance Commissioners

RE: Request for Comments on L&H IGA Model #520

Gentlemen:

Comments on the Life and Health Insurance Guaranty Association Model Act will be much briefer than my comments on the Receivership Model, #555. One of the 2014 Charge to the RMLWG is to

Study and provide a recommendation for encouraging the states' adoption of critical/essential and noncontroversial provisions of Insurer Receivership Model Act (#555) and encourage the states' adoption of other related model laws including the Life and Health Insurance Guaranty Association Model Act (#520) and the Property and Casualty Insurance Guaranty Association Model Act (#540)—Essential

But, this may really relate to the first charge to the RITF to, “Monitor and promote efficient operations of receiverships and guaranty funds.—Essential.”

All of the above may relate to the “Financial Regulation Standards and Accreditation (F) Committee - Mission Statement.” This provides, in part, “The mission of the accreditation program is to establish and maintain standards to promote sound insurance company financial solvency regulation. The accreditation program provides a process whereby solvency regulation of multi-state insurance companies can be enhanced and adequately monitored with emphasis on the following:

1. Adequate solvency laws and regulations in each accredited state to protect consumers and guaranty funds...."

It may strike some as odd that part of the mission above is to “protect ,, guaranty funds” but, the thought may be that to protect consumers, which these do, these also need to be protected. Two of the Part A – Laws and Regulations Standards are:

13. Receivership

State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent as set forth in the NAIC’s Insurer Receivership Model Act.
14. Guaranty Funds

State law should provide for a regulatory framework such as that contained in the NAIC’s model acts on the subject, to ensure the payment of policyholders’ obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.

Attached is a note from about 3 years ago on Section 711, since 711 is one of the sections that does need to be substantially similar, but not necessarily identical or uniform, between the states for Models 520 and 555 to work best.

Respectfully submitted,

/s/

Douglas A. Hartz
First, the following observations are my own only and are not meant to represent the views of anyone else or any other group of which I may be a member.

I do not know if the questions regarding *Insurer Receivership Model Act*, Section 711 should be limited only to the effects the operation of 711 may have in a receivership. These effects were not, by my recollection, the major factor considered when we first considered adoption of 711’s predecessor section in the receivership models prior to IRMA. Rather, the main consideration, by my recollection, was if not adopting QFC treatment would lead to disadvantages for operating insurance companies. It is simply the case that the provisions of insolvency law (creditor and debtor rights and remedies in the context of insolvency) do effect how ongoing companies plan for ongoing operations. This may be the tail wagging the dog, but there would be no financial system if the parties entering into a financial arrangement did not have some idea what to expect (what law would apply) in the event that one party becomes insolvent. The expertise for addressing questions regarding if a provision in the insolvency law may affect ongoing companies may be more likely found in insolvency practitioners and may be less likely to be found in other areas of insurance financial regulation. This may be the case simply because insolvency practitioners will have had more occasions to consider such questions. In any event, since about 1994 the NAIC task force dealing with insolvency has reported to the NAIC E-Cmte (instead of to the EX Cmte). Thus, it now makes recommendations to the group that will consider impacts to the financial regulation on ongoing insurance companies. But, it still has to make recommendations so that there is something to consider. While it may not be what is going on here, we have seen attempts to delay action on matters by playing off of created confusion about which group at the NAIC should be dealing with a matter.

While the past consideration may have focused on potential disadvantages for operating insurance companies, the question may be if the potential harm to insurance benefit claimants in the event of insolvency is so great that some disadvantages to operating insurance companies may have to be tolerated. This is a question where the expertise to address it most likely exists in the Insolvency Task Force. Estimating these potential disadvantages or harms may take further study, but both should likely be first addressed by the Insolvency Task Force.

The past consideration’s focus on potential disadvantages for operating insurance companies was centered on what was contained in the Bankruptcy Code (both in the late 1990’s and in the updates made to IRMA). The question was if a variance in state insolvency law from what was in the Bankruptcy Code would create a disadvantage for
ongoing insurers. It appears that there is now some consideration and debate about the provisions in the Bankruptcy Code which should be followed closely. But this should not be the only consideration regarding what should be in IRMA. What is in the insurers insolvency model should reflect what works best out of the state’s insolvency laws and the Bankruptcy Code. But when looking at what is best out of the Bankruptcy Code, it must also be tempered with the recognition that insurance is different. It rests more on consumer confidence than may be the case with general commerce. A failure in the protecting insurance benefit claimants could have more detrimental effects on the insurance industry.

In the last call there was reference to 17 states adopting QFC treatment. This appears being pointed to as an argument that the NAIC model should reflect the same because so many states have adopted this. This is not a good argument because the models are supposed to reflect the best provisions that the states have put into place – what is best for the insurance industry and its customers – not what is merely most common. That may simply reflect what was most well lobbied. If “most common” were the test, then we would not have, for example, requirements for CPA opinions annually. Very few states had this requirement before the NAIC Accreditation Program lead to its adoption.

Douglas A. Hartz
Insurance Regulatory Consulting Group
Consultant / Deputy Receiver
T 573-268-6546
DougHartzKC@gmail.com

DougHartz@troubledinsurers.com


http://www.carrg-uwc.com/
October 10, 2014

James Kennedy, Chair
Receivership Model Laws (E) Working Group
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE:  Life and Health Insurance Guaranty Association Model Act

Dear James:

We appreciate the opportunity to provide input concerning the Working Group’s consideration of state consistency in regards to the NAIC’s Life and Health Insurance Guaranty Association Model Act. As you may know, NOLHGA has been working very closely with its members, the ACLI and others over the course of the last several years to further consistency in state guaranty association laws based on the NAIC’s Life and Health Insurance Guaranty Association Model Act.

As a result of those efforts, there are currently 41 states that have guaranty association laws substantially similar to the current version of the NAIC Model Act. As an example of that consistency, 44 states now have coverage limits which meet or exceed all of the coverage limits for life, health and allocated annuity business, as set forth in the NAIC’s Guaranty Association Model Act.

Given the progress made to date in updating guaranty association laws to be consistent with the Life and Health Guaranty Association Model, we do not believe that it is necessary to identify a list of the minimum provisions of the model that should be considered “critical for uniformity.”

Again, we thank you for the opportunity to provide input on this issue, and we are happy to discuss this matter further on the upcoming conference call.

Sincerely,

Joni L. Forsythe