

**Receivership Model Act Revision (E) Working Group
Highlighted Issues
Property and Casualty Insurance Guaranty Association Model Act**

I. Purpose and Construction.

Section 2 of the current model was deleted from the proposed model. Two roll call votes were taken on this section. On 12/3/05 the vote was 5-7 in favor of retaining the section. On 5/25/06 the vote was 6-4 in favor of deleting it. The section to be deleted reads as follows:

Section 2. Purpose

The purpose of this Act is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and to the extent provided in this Act minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to provide an association to assess the cost of such protection among insurers.

Section 4 of the current model (Construction) was also deleted. The deleted section read as follows:

Section 4. Construction

This Act shall be construed to effect the purpose under Section 2 which will constitute an aid and guide to interpretation.

II. Assumption of business from unlicensed carriers.

Under the current model, policies assumed from an unlicensed carrier are not included within the definition of covered claims for the guaranty association. On 5/9/06 by a vote of 7-4, these policies were included as covered claims. The necessary changes include the definition of "Assumed Claims Transaction" (§ 3D), and the use of that term in the definition of "Covered Claim" (§ 3H(1), and "Insolvent Insurer" (§ 3I).

III. Policy protection claims by insureds.

On 8/31/06, a motion to remove the exclusion of claims based on IBNR from the definition of "Covered Claims" (§ 3H(2)(j)), was defeated by a vote of 8-6.

IV. Coverage limits.

On 1/17/06, a straw vote was taken to determine if there was a consensus on changing the process for determining the coverage limit. Three members favored a fixed \$500,000 cap, three favored an adjustable cap starting at \$500,000, two favored an adjustable cap, and other members were opposed to any change. Because there was no consensus for a change, a fixed cap of \$500,000 was presented and adopted by voice vote in § 6A(1)(a)(iii).

V. Claims bar date.

On 2/7/06, a 25-month claims bar date was established in § 6A(1)(b) by a vote of 7-2 with one abstention. On 8/31/06, the issue was reconsidered and the 25-month bar date was deleted by a vote of 8-5 with one abstention. The two alternative versions are:

(2/7/06)

In no event shall the association 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 or unless such claim arose under a workers' compensation policy and was timely filed under [insert citation for workers' compensation statute establishing time limit for filing of claim], a covered claim shall not include a claim filed with the association or insolvent insurer more than twenty-five months after the date of the order of liquidation.

(8/31/06)

In no event shall the association 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 guaranty fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

VI. Receiver bound by GA claims determination.

On 3/4/06, a motion to delete § 10C entirely was defeated 9-7. A subsequent motion to delete only the last sentence of the subsection passed by a vote of 10-5. In the current model, the subsection read as follows, and the deleted language is indicated by a strike through:

C. The association and any association similar to the association in another state shall be entitled to file a claim in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this Act or similar laws in other states and shall receive dividends and other distributions at the priority set forth in [insert reference to priority of distribution in liquidation act]. ~~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 to the extent such determinations or settlements satisfy obligations of the Association. The receiver shall not be bound in any way by such determinations or settlements to the extent there remains a claim against the insolvent insurer.~~

VII. Net worth exclusion.

During several meetings in June 2006, the Working Group discussed and approved each subsection of § 11. On 7/11/06, this section was accepted as an optional section by a vote of 5-4 with one abstention. On 7/18/06, a motion to reconsider the earlier vote was defeated by a vote of 8-4; therefore this section as drafted is included as optional. Though already enacted in some form in 35 states according to NCIGF, the existence and operation of the high net worth exclusion is still highly controversial and will undoubtedly be brought up at the Receivership and Insolvency (E) Task Force and Financial Condition (E) Committee levels regardless of the decision at each level.

VIII. Immunity

On 5/25/06, by a vote of 6-4, the Working Group adopted a revised version of § 16 on immunity of the guaranty association, its staff, members, directors, and the receiver and its staff. The immunity section in the prior model was substantially unlimited other than as it was interpreted by the courts. The new version of the provision removes immunity for the association for tort claims and for contract claims arising out of its statutory obligations. Section 16 reads as follows, and the language added is indicated by underlining:

There shall be no liability on the part of, and no cause of action of any nature shall arise against a member insurer, the association or its agents or employees, the board of directors, or any person serving as an alternate or substitute representative of any director, or the commissioner or the commissioner's representatives for any action taken or any failure to act by them in the performance of their powers and duties under this Act; however, the association may be sued 1) for the limited purpose of compelling it to perform its statutory duty to deal with the covered claims of insolvent insurers, 2) to enforce contracts entered into by the association; and 3) for torts wholly unrelated to any covered claim.

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