

# **HOUSE . . . . . No. 4772**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, June 18, 2024.

The committee on Ways and Means, to whom was referred the Bill to modernize the Massachusetts insurer's insolvency fund (House, No. 962), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4772).

For the committee,

AARON MICHLEWITZ.

**HOUSE . . . . . No. 4772**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act to modernize the Massachusetts insurer’s insolvency fund.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 175D of the General Laws is hereby amended by striking out  
2 sections 1 and 2 and inserting in place thereof the following 2 sections:-

3           Section 1. (a) As used in this chapter, the following words shall, unless the context  
4 clearly requires otherwise, have the following meanings:

5           “Affiliate”, a person who directly or indirectly, through 1 or more intermediaries,  
6 controls, is controlled by or is under common control with another person on December 31 of the  
7 year immediately preceding the date a member insurer becomes an insolvent member insurer.

8           “Association similar to the Fund”, any guaranty association, security fund or other  
9 insolvency mechanism that affords protection similar to that of the Fund, including, but not  
10 limited to, any property and casualty insolvency mechanism that obtains assessments or other  
11 contributions from insurers on a pre-insolvency basis.

12           “Claimant”, any person instituting a covered claim; provided, that no person who is an  
13 affiliate of the insolvent member insurer shall be a claimant.

14           “Commissioner”, the commissioner of insurance.

15           “Control”, the possession, direct or indirect, of the power to direct or cause the direction  
16 of the management and policies of a person, whether through the ownership of voting securities,  
17 by contract other than a commercial contract for goods or non-management services, or  
18 otherwise, unless the power is the result of an official position with or corporate office held by  
19 the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls,  
20 holds with the power to vote or holds proxies representing, not less than 10 per cent of the voting  
21 securities of any other person; provided, that this presumption may be rebutted by a showing that  
22 control does not exist in fact.

23           “Covered claim”, an unpaid claim, including a claim for unearned premiums, submitted  
24 by a claimant, which arises out of, and is within the coverage and is subject to the applicable  
25 limits of, an insurance policy to which this chapter applies issued by a member insurer, if the  
26 member insurer becomes an insolvent member insurer after July 1, 2025 and: (i) the claimant or  
27 insured is a resident of the commonwealth at the time of the insured event; provided, that for  
28 entities other than an individual, the residence or principal place of business of a claimant,  
29 insured or policyholder shall be located in the commonwealth at the time of the insured event; or  
30 (ii) the claim is a first-party claim for damage to property with a permanent location in the  
31 commonwealth. Unless otherwise provided in this chapter, “covered claim” shall not include:

32           (A) any amount awarded as punitive or exemplary damages;

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

34 (C) any amount due any reinsurer, insurer, insurance pool or underwriting association,  
35 health maintenance organization, hospital plan corporation, professional health service  
36 corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution,  
37 indemnification or otherwise; provided, that no claim for any amount due any reinsurer, insurer,  
38 insurance pool, underwriting association, health maintenance organization, hospital plan  
39 corporation, professional health service corporation or self-insurer shall be asserted against a  
40 person insured under a policy issued by an insolvent member insurer other than to the extent the  
41 claim exceeds the association obligation limitations set forth in section 5;

42 (D) any claims excluded pursuant to section 10 due to the high net worth of an insured;

43 (E) any first-party claims by an insured that is an affiliate of the insolvent member  
44 insurer;

45 (F) any fee or other amount relating to goods or services sought by or on behalf of any  
46 attorney or other provider of goods or services retained by the insolvent member insurer or an  
47 insured prior to the date it was determined to be insolvent;

48 (G) any fee or other amount sought by or on behalf of any attorney or other provider of  
49 goods or services retained by any insured or claimant in connection with the assertion or  
50 prosecution of any claim, covered or otherwise, against the Fund;

51 (H) any claims for interest; or

52 (I) any claim filed with the Fund or a liquidator for protection afforded under the  
53 insured's policy for incurred-but-not-reported losses.

54 “Cybersecurity insurance”, insurance that provides first- and third-party coverage, in a  
55 policy or endorsement, written on a direct, admitted basis, providing indemnity for losses or loss  
56 mitigation arising out of or relating to data privacy breaches, unauthorized information network  
57 security intrusions, computer viruses, ransomware, cyber extortion, identity theft and similar  
58 exposures.

59 “Director”, an individual serving on behalf of an insurer member of the board of directors  
60 or an insurance producer representative on the board of directors.

61 “Fund”, the Massachusetts Insurers Insolvency Fund established by section 3.

62 “High net worth insured”, any insured whose net worth exceeds \$25 million on  
63 December 31 of the year prior to the year in which the insurer becomes an insolvent member  
64 insurer; provided, that an insured’s net worth on that date shall be deemed to include the  
65 aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a  
66 consolidated basis; and provided further, that high net worth insured shall not include a federal,  
67 state or local government entity.

68 “Insolvent member insurer”, a member insurer against whom a final order of liquidation,  
69 which has not been stayed and to which there is no further right of appeal, has been entered with  
70 a finding of insolvency by a court of competent jurisdiction in the insurer’s state of domicile  
71 after July 1, 2025.

72 “Insured”, any named insured, any additional insured, any vendor, lessor or any other  
73 party identified as an insured under the policy.

74 “Member insurer”, any person, except as provided in the ninth paragraph of section 6 of  
75 chapter 362 of the acts of 1975, who: (i) writes any kind of insurance to which this chapter  
76 applies, including the exchange of reciprocal or inter-insurance contracts; and (ii) is licensed to  
77 transact insurance in the commonwealth. An insurer shall cease to be a member insurer in the  
78 Fund effective on the day following the termination or expiration of its license to transact the  
79 kinds of insurance to which this chapter applies; provided, however, that the insurer shall remain  
80 liable as a member insurer for any and all obligations, including obligations for assessments  
81 levied prior to the termination or expiration of the insurer’s license and assessments levied after  
82 the termination or expiration, which relate to any insurer that became an insolvent member  
83 insurer prior to the termination or expiration of the insurer’s license.

84 “Net direct written premiums”, direct gross premiums written in the commonwealth on  
85 insurance policies to which this chapter applies, including policy and membership fees, less  
86 return premiums thereon, and dividends paid or credited to policy holders on such direct  
87 business. Premiums written by any insurer on policies issued to self-insurers, whether or not  
88 designated reinsurance contracts, shall be deemed net direct written premiums. For workers’  
89 compensation policies issued with deductibles under paragraph (4) of section 25A of chapter  
90 152, net direct written premiums shall be deemed to be an amount equal to standard premium  
91 plus any applicable all risk adjustment program amounts. Net direct written premiums shall not  
92 include premiums on contracts between insurers or reinsurers.

93 “Novation”, a transaction whereby existing policy obligations became the direct  
94 obligations of another insurer through consent of the policyholder and that thereafter the ceding  
95 insurer or entity initially obligated under the claims or policies is released by the policyholder

96 from performing its claim or policy obligations. Consent may be express or implied based upon  
97 the circumstances, notice provided and conduct of the parties.

98 “Person”, any individual, aggregation of individuals, corporation, partnership or other  
99 legal entity, including, but not limited to, governmental entities.

100 “Receiver”, a liquidator, rehabilitator, conservator or ancillary receiver, as the context  
101 requires, including, but not limited to, any receiver appointed pursuant to section 180C of  
102 chapter 175.

103 “Self-insurer”, a person that covers its liability through a qualified individual or group  
104 self-insurance program or any other formal program created for the specific purpose of covering  
105 liabilities typically covered by insurance.

106 Section 2. This chapter shall apply to all kinds of direct insurance, including, but not  
107 limited to, cybersecurity insurance. This chapter shall not apply to:

108 (i) life, annuity, health, accident or disability insurance;

109 (ii) mortgage guaranty, financial guaranty or other forms of insurance offering protection  
110 against investment risks;

111 (iii) fidelity or surety bonds or any other bonding obligations;

112 (iv) credit insurance, vendors’ single interest insurance, collateral protection insurance or  
113 any similar insurance protecting the interests of a creditor arising out of a creditor-debtor  
114 transaction;

115 (v) insurance of warranties or service contracts, including insurance that provides for the  
116 repair, replacement or service of goods or property, indemnification for repair, replacement or  
117 service for the operational or structural failure of the goods or property due to a defect in  
118 materials, workmanship or normal wear and tear or that provides reimbursement for the liability  
119 incurred by the issuer of agreements or service contracts that provide such benefits;

120 (vi) title insurance;

121 (vii) ocean marine insurance;

122 (viii) any transaction or combination of transactions between a person, including affiliates  
123 of such person, and an insurer, including affiliates of such insurer, which involves the transfer of  
124 investment or credit risk unaccompanied by transfer of insurance risk; or

125 (ix) any insurance provided by or guaranteed by the government.

126 SECTION 2. Section 3 of said chapter 175D, as appearing in the 2022 Official Edition, is  
127 hereby amended by striking out the word “six” and inserting in place thereof the following  
128 figure:- 7.

129 SECTION 3. Said chapter 175D is hereby further amended by striking out sections 4 to  
130 17, inclusive, and inserting in place thereof the following 17 sections:-

131 Section 4. (a) The board of directors of the Fund shall consist of not less than 5 nor more  
132 than 9 persons serving terms as established in the plan of operation pursuant to section 7. The  
133 insurer members of the board shall be selected by member insurers subject to the approval of the  
134 commissioner; provided, however, that 1 member of the board shall be appointed by the  
135 commissioner as representative of the insurance producers. Vacancies on the board shall be filled



136 for the remaining period of the term by a majority vote of the remaining insurer members subject  
137 to the approval of the commissioner.

138 (b) In approving selections to the board, the commissioner shall consider whether all  
139 member insurers are fairly represented.

140 (c) Members of the board of directors may be reimbursed from the assets of the Fund for  
141 reasonable expenses incurred by them as members of the board of directors.

142 (d) Any director who is an insurer in receivership shall be terminated as a director,  
143 effective as of the date of the entry of the order of receivership. Any resulting vacancies on the  
144 board shall be filled for the remaining period of the term in accordance with the provisions of  
145 subsection (a).

146 (e) A director shall be deemed unable to satisfactorily perform the designated functions  
147 as a director by missing 3 consecutive board meetings, including, but not limited to, for illness,  
148 nonattendance or any other reason, and the board of directors may declare the office vacant and  
149 the director shall be replaced in accordance with subsection (a).

150 (f) If the commissioner has reasonable cause to believe that a director failed to disclose a  
151 known conflict of interest with their duties on the board, failed to take appropriate action based  
152 on a known conflict of interest with their duties on the board or has been indicted or charged  
153 with a felony or a misdemeanor involving moral turpitude, the commissioner may suspend the  
154 director pending the outcome of an investigation or hearing by the commissioner or the  
155 conclusion of any criminal proceedings. A member insurer with a director elected to the board  
156 may replace a suspended director representing the member insurer prior to the completion of an  
157 investigation, hearing or criminal proceeding. In the event that the allegations are substantiated at

158 the conclusion of an investigation, hearing or criminal proceeding, the position shall be declared  
159 vacant and the member or director shall be replaced in accordance with subsection (a).

160 Section 5. (a)(1) The Fund shall be obligated to pay covered claims existing prior to an  
161 order of liquidation of a member insurer, arising within 30 days after the order of liquidation, or  
162 before the policy expiration date if less than 30 days after the order of liquidation, or before the  
163 insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the  
164 order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as  
165 follows:

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

168 (ii) for liquidations commencing after January 1, 2023, an amount not exceeding \$50,000  
169 per policy for a covered claim for the return of unearned premium;

170 (iii) for liquidations commencing after January 1, 2023, an amount not exceeding  
171 \$500,000 per claimant for all other covered claims; or

172 (iv) for liquidations commencing after January 1, 2023, an amount not exceeding  
173 \$1,000,000 for all first-party property loss claims arising from a single occurrence under a policy  
174 covering commercial or residential property.

175 (2) In no event shall the Fund be obligated to pay an amount in excess of \$500,000 for all  
176 first- and third-party claims under a policy or endorsement providing or that is found to provide  
177 cybersecurity insurance coverage and arising out of or related to a single insured event,  
178 regardless of the number of claims made or the number of claimants.

179 (3) In no event shall the Fund be obligated to pay a claimant an amount in excess of the  
180 obligation of the insolvent member insurer under the policy or coverage from which the claim  
181 arises. Notwithstanding any other provision of this chapter, for liquidations commencing after  
182 January 1, 2023, a covered claim shall not include a claim filed with the Fund after the final date  
183 set by the court for the filing of claims against the liquidator or receiver of an insolvent member  
184 insurer.

185 (4) For the purpose of filing a claim under this section, notice of claims to the liquidator  
186 of the insolvent member insurer shall be deemed notice to the Fund or its agent and a list of  
187 claims shall be periodically submitted to the Fund or association similar to the Fund in another  
188 state by the liquidator.

189 (5) Any obligation of the Fund to defend an insured shall cease upon the Fund's payment  
190 or tender of an amount equal to the lesser of the Fund's covered claim obligation limit or the  
191 applicable policy limit.

192 (b) The Fund shall be deemed the insurer to the extent of its obligation on the covered  
193 claims and to that extent, subject to the limitations provided in this chapter, including, but not  
194 limited to, section 15, shall have all rights, duties and policy obligations of the insolvent member  
195 insurer as if the insurer had not become insolvent, including but not limited to, the right to pursue  
196 and retain salvage and subrogation recoverable on covered claim obligations to the extent paid  
197 by the Fund. The Fund shall not be deemed the insolvent member insurer for the purpose of  
198 conferring jurisdiction or for any reason not expressly stated in this chapter. The extent of the  
199 Fund's subrogation rights and any other rights of reimbursement with respect to its covered

200 claims payments shall not be limited as if the Fund were the insolvent member insurer but shall  
201 be determined independently by taking into account the Fund's rights under section 11.

202 (c)(1) The Fund shall assess insurers amounts necessary to pay the obligations of the  
203 Fund under subsection (a) subsequent to an insolvency, the expenses of handling covered claims  
204 subsequent to an insolvency and other expenses authorized by this chapter. The assessments of  
205 each member insurer shall be in the proportion that the net direct written premiums of the  
206 member insurer for the calendar year preceding the assessment bears to the net direct written  
207 premiums of all member insurers for the calendar year preceding the assessment. Each member  
208 insurer shall be notified of the assessment not later than 30 days before it is due. A member  
209 insurer may not be assessed in any 1 year on any account an amount greater than 2 per cent of  
210 that member insurer's net direct written premiums for the calendar year preceding the  
211 assessment. A member insurer may be also subject to an additional assessment determined by the  
212 board, not to exceed \$1,000 in any 1 year, for the purpose of covering administrative and other  
213 expenses of the Fund. If the maximum assessment, together with the other assets of the Fund,  
214 does not provide in any 1 year an amount sufficient to make all necessary payments, the Fund's  
215 available assets shall be pro-rated and the unpaid portion shall be paid as soon thereafter as  
216 additional assets become available.

217 (2) The Fund may exempt or defer, in whole or in part, the assessment of a member  
218 insurer, if the assessment would cause the member insurer's financial statement to reflect  
219 amounts of capital or surplus less than the minimum amounts required for a certificate of  
220 authority by a jurisdiction in which the member insurer is authorized to transact insurance;  
221 provided, however, that during the period of deferment no dividends shall be paid to  
222 shareholders or policyholders. Deferred assessments shall be paid when the payment will not

223 reduce capital or surplus below required minimums. Payments shall be refunded to those  
224 companies receiving larger assessments by virtue of such deferment, or at the election of the  
225 member insurer, credited against future assessments.

226 (d) The Fund shall investigate claims brought against the Fund and adjust, compromise,  
227 settle and pay covered claims to the extent of the Fund's obligation and deny all other claims.  
228 The Fund shall pay claims in any order that it may deem reasonable, including the payment of  
229 claims as they are received from the claimants or in groups or categories of claims. The Fund  
230 shall have the right to appoint, to substitute and to direct legal counsel for the defense of covered  
231 claims.

232 (e) The Fund shall notify claimants in the commonwealth as deemed necessary by the  
233 commissioner and upon the commissioner's request, to the extent records are available to the  
234 Fund.

235 (f)(1) The Fund shall have the right to review and contest as set forth in this subsection  
236 settlements, releases, compromises, waivers and judgments to which the insolvent member  
237 insurer or its insureds were parties prior to the entry of the order of liquidation. In an action to  
238 enforce settlements, releases and judgments to which the insolvent member insurer or its  
239 insureds were parties prior to the entry of the order of liquidation, the Fund shall have the right to  
240 assert the following defenses, in addition to the defenses available to the insurer:

241 (i) The Fund shall not be bound by a settlement, release, compromise or waiver executed  
242 by an insured or the insurer, or any judgment entered against an insured or the insurer by consent  
243 or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or  
244 judgment was: (A) executed or entered within 12 months prior to the entry of an order of

245 liquidation; or (B) executed by or taken against an insured or the insurer based on default, fraud,  
246 collusion or the insurer's failure to defend.

247 (ii) If a court of competent jurisdiction finds that the Fund is not bound by a settlement,  
248 release, compromise, waiver or judgment for any of the reasons described in clause (i) or any  
249 other legally sufficient reason, the settlement, release, compromise, waiver or judgment shall be  
250 set aside, and the Fund shall be permitted to defend any covered claim on the merits. The  
251 settlement, release, compromise, waiver or judgment shall not be considered as evidence of  
252 liability or damages in connection with any claim brought against the Fund or any other party  
253 under this chapter.

254 (iii) The Fund shall have the right to assert any statutory defenses or rights of offset  
255 against any settlement, release, compromise or waiver executed by an insured or the insurer, or  
256 any judgment taken against the insured or the insurer.

257 (2) As to any covered claims arising from a judgment under any decision, verdict or  
258 finding based on the default of the insolvent member insurer or its failure to defend, the Fund,  
259 either on its own behalf or on behalf of an insured may apply to have the judgment, order,  
260 decision, verdict or finding set aside by the same court or administrator that entered the  
261 judgment, order, decision, verdict or finding and such judgement shall be vacated and the Fund  
262 shall be permitted to defend the claim on the merits.

263 (g) The Fund shall handle claims through its own employees, 1 or more insurers, or other  
264 persons designated as servicing facilities, which may include the receiver for an insolvent  
265 member insurer. Designation of a servicing facility shall be subject to the approval of the  
266 commissioner, but the designation may be declined by a member insurer.

267 (h) The Fund shall reimburse each servicing facility for obligations of the Fund paid by  
268 the facility and for expenses incurred by the facility while handling claims on behalf of the Fund  
269 and shall pay the other expenses of the Fund authorized by this chapter.

270 (i) The Fund shall submit, not later than 90 days after the end of the Fund's fiscal year, a  
271 financial report for the preceding fiscal year in a form approved by the commissioner.

272 (j) The Fund may:

273 (i) employ or retain persons as are necessary to handle claims, provide covered policy  
274 benefits, and perform other duties of the Fund;

275 (ii) borrow funds necessary to effect the purposes of this chapter in accordance with the  
276 plan of operation; provided, that the board of directors shall have the authority to pledge all or an  
277 appropriate portion of future assessments as necessary to secure a loan that may be needed to pay  
278 covered claims; and provided further, that until all loans secured by any pledged assessments are  
279 fully satisfied, the board of directors shall assess the maximum allowable under subsection (c);

280 (iii) sue or be sued, including but not limited to, taking any legal action to collect unpaid  
281 assessments from member insurers, any amounts due for subrogation or salvage, other insurance  
282 recoveries, large deductible reimbursements or to recover any amount due from a high net worth  
283 policyholder; provided, that the Fund's power to sue shall include, but not be limited to, the  
284 power and right to intervene as a party to the proceedings before any court that has jurisdiction  
285 over an insolvent member insurer when the Fund is a creditor or potential creditor of the  
286 insolvent member insurer's estate;

287 (iv) negotiate and become a party to contracts necessary to carry out the purpose of this  
288 chapter;

289 (v) refund to the member insurers in proportion to the contribution of each member  
290 insurer that amount by which the assets of the Fund exceed the liabilities, if at the end of any  
291 calendar year, the board of directors finds that the assets of the Fund exceed the reasonable  
292 amounts the board determines are appropriate to assure that the Fund has sufficient capacity to  
293 fulfill its statutory duties; and

294 (vi) perform other acts necessary or proper to effectuate the purpose of this chapter.

295 Section 6. Except for actions by the receiver, all actions relating to or arising out of this  
296 chapter against the Fund shall be brought in the courts in the commonwealth. The courts shall  
297 have exclusive jurisdiction over all actions relating to or arising out of this chapter against the  
298 Fund.

299 The exclusive venue in any action by or against the Fund shall be in the business  
300 litigation session of the Superior court for Suffolk county. The Fund may waive venue as to  
301 specific actions filed by or against it.

302 Section 7. (a)(1) The Fund shall submit to the commissioner a plan of operation and any  
303 amendments to the plan of operation necessary or suitable to assure the fair, reasonable and  
304 equitable administration of the Fund. The plan of operation and any amendments shall become  
305 effective upon approval in writing by the commissioner.

306 (2) If the Fund fails to submit a suitable plan of operation within 90 days after July 1,  
307 2025, or if at any time thereafter the Fund fails to submit suitable amendments to the plan, the



308 commissioner shall, after notice and hearing, adopt reasonable rules necessary or advisable to  
309 effectuate this chapter. The rules shall continue in force until modified by the commissioner or  
310 superseded by a plan submitted by the Fund and approved by the commissioner.

311 (b) All member insurers shall comply with the plan of operation.

312 (c) The plan of operation shall establish:

313 (i) procedures for the performance of the powers and duties of the Fund under section 5;

314 (ii) procedures for handling assets of the Fund;

315 (iii) written procedures for the disposition of liquidating dividends or other monies

316 received from the estate of an insolvent member insurer;

317 (iv) written procedures to designate the amount and method of reimbursing members of  
318 the board of directors under section 4 for reasonable expenses occurred in the performance of  
319 their duties;

320 (v) procedures by which claims may be filed with the Fund and acceptable forms of proof  
321 of covered claims;

322 (vi) regular places and times for meetings of the board of directors;

323 (vii) written procedures for records to be kept of all financial transactions of the Fund, its  
324 agents and the board of directors;

325 (viii) an option for any member insurer aggrieved by any final action or decision of the  
326 Fund to appeal to the commissioner within 30 days after the action or decision;

327 (ix) procedures under which selections for the board of directors shall be submitted to the  
328 commissioner; and

329 (x) any additional provisions necessary or proper for the execution of the powers and  
330 duties of the Fund.

331 (3) The plan of operation may provide that any or all powers and duties of the Fund,  
332 except those provided under subsection (c) of section 5 and clause (ii) of subsection (j) of section  
333 5, shall be delegated to a corporation, association similar to the Fund or other organization which  
334 performs or will perform functions similar to those of the Fund or its equivalent in 2 or more  
335 states. The corporation, association similar to the Fund or organization shall be reimbursed as a  
336 servicing facility would be reimbursed and shall be paid for its performance of any other  
337 functions of the Fund. A delegation under this paragraph shall take effect only with the approval  
338 of both the board of directors and the commissioner, and may be made only to a corporation,  
339 association or organization that extends protection not substantially less favorable and effective  
340 than that provided by this chapter.

341 Section 8. (a) The commissioner shall:

342 (i) notify the Fund of an insolvent member insurer not later than 3 days after the  
343 commissioner receives notice of the determination of the insolvency and furnish to the Fund a  
344 copy of any complaint seeking an order of liquidation with a finding of insolvency against a  
345 member insurer at the same time that the complaint is filed with a court of competent  
346 jurisdiction; and

347 (ii) provide the Fund with a statement of the net direct written premiums of each member  
348 insurer upon request of the board of directors.

349 (b) The commissioner may:

350 (i) suspend or revoke, after notice and hearing, the certificate of authority to transact  
351 insurance in the commonwealth of a member insurer that fails to pay an assessment when due or  
352 fails to comply with the plan of operation; provided, however, that, as an alternative, the  
353 commissioner may levy a fine on a member insurer that fails to pay an assessment when due.  
354 The fine shall not exceed 5 per cent of the unpaid assessment per month; provided, that a fine  
355 shall be not less than \$200 per month;

356 (ii) revoke the designation of a servicing facility if the commissioner finds claims are  
357 being handled unsatisfactorily; and

358 (iii) examine, audit, or otherwise regulate the Fund in accordance with the  
359 commissioner's authority under section 4 of chapter 175 as if it were a domestic company, as  
360 defined in section 1 of chapter 175.

361 (c) An order of the commissioner under this chapter shall be subject to a public hearing  
362 and further judicial review in superior court.

363 Section 9. (a) The Fund may join 1 or more organizations associations similar to the Fund  
364 to further the purposes and administer the powers and duties of the Fund. The Fund may  
365 designate 1 or more of these organizations to act as a liaison for the Fund and, to the extent the  
366 Fund authorizes, to bind the Fund in agreements or settlements with receivers of insolvent  
367 insurance companies or their designated representatives.

368 (b) The Fund, in cooperation with associations similar to the Fund, or their designated  
369 representatives, shall reasonably coordinate and cooperate with receivers and regulators, or their

370 designated representatives, in the commonwealth and other states to promote efficiency and  
371 uniformity, including the use of Uniform Data Standards as promulgated or approved by the  
372 National Association of Insurance Commissioners. The Fund may also authorize receivers to  
373 collect on its behalf amounts due to the Fund from policyholders and others persons.

374           Section 10. (a) Any person recovering under this chapter shall be deemed to have  
375 assigned any rights under the policy to the Fund to the extent of their recovery from the Fund but  
376 shall retain the right to recover from the liquidator of the insolvent member insurer any amount  
377 of the claim covered by the policy but not paid by the Fund. Every insured or claimant seeking  
378 the protection of this chapter shall cooperate with the Fund to the same extent as the person  
379 insured or claimant would have been required to cooperate with the insolvent member insurer.  
380 The Fund shall have no cause of action against the insured of the insolvent member insurer for  
381 sums it has paid out except any causes of action as the insolvent member insurer would have had  
382 if the sums had been paid by the insolvent member insurer, including, but not limited to, large  
383 deductible reimbursements provided in the policy, and except as provided in subsection (b) and  
384 in section 12.

385           (b) The Fund shall have the right to recover from any person who is an affiliate of the  
386 insolvent member insurer all amounts paid by the Fund on behalf of that person pursuant to this  
387 chapter, whether for indemnity, defense or otherwise.

388           (c) The Fund and any association similar to the Fund in another state shall be entitled to  
389 file a claim in the liquidation of an insolvent member insurer for any amounts paid by the Fund  
390 or association similar to the fund on covered claim obligations as determined under this chapter

391 or similar laws in other states and shall receive dividends and other distributions at the priority of  
392 distribution set forth in section 180F of chapter 175.

393 (d) The Fund shall periodically file with the receiver or liquidator of the insolvent  
394 member insurer statements of the covered claims paid by the Fund and estimates of anticipated  
395 claims on the Fund, which shall preserve the rights of the Fund against the assets of the insolvent  
396 member insurer in the commonwealth and other states and jurisdictions.

397 (e) The receiver, liquidator or statutory successor of an insolvent member insurer shall be  
398 bound by settlements of claims by the Fund and shall grant, against the assets of the insolvent  
399 member insurer, priority equal to that which the claimant would have been entitled in the  
400 absence of this chapter.

401 Section 11. (a) Any person having a claim against a member insurer shall be required first  
402 to exhaust all coverage provided by any other policy, including the right to a defense under the  
403 other policy, if the claim under the other policy arises from the same facts, injury or loss that  
404 gave rise to the covered claim against the Fund. The requirement to exhaust shall apply without  
405 regard to whether the other insurance policy is a policy written by a member insurer; provided,  
406 however, that no person shall be required to exhaust any right under the policy of an insolvent  
407 member insurer or any right under a life insurance policy. If the Fund pays a covered claim  
408 without the exhaustion of all other coverage that could have been exhausted under this section,  
409 the Fund shall have an independent right of recovery against each insurer whose coverage was  
410 not exhausted in the amount the Fund would not have had to pay if that insurer's coverage had  
411 been exhausted first.

412 (b)(1) Any amount payable on a covered claim under this chapter shall be reduced by the  
413 full applicable limits stated in the other insurance policy, or by the amount of the recovery under  
414 the other insurance policy as provided herein. The Fund shall receive a full credit for the stated  
415 limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all  
416 coverage and limits applicable under the other insurance policy. If the claimant demonstrates that  
417 the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other  
418 insurance policy, or if there are no applicable stated limits under the policy, the Fund shall  
419 receive a full credit for the total recovery. The credit shall be deducted from the lesser of: (i) the  
420 Fund's covered claim limit in section 5; (ii) the amount of the judgment or settlement of the  
421 claim; or (iii) the policy limits of the policy of the insolvent member insurer; provided, however,  
422 that in no case, shall the obligation of the Fund exceed the covered claim limit established in  
423 section 5.

424 (2) Except to the extent that the claimant has a contractual right to claim defense under an  
425 insurance policy issued by another insurer, nothing in this section shall relieve the Fund of the  
426 duty to defend under the policy issued by the insolvent member insurer; provided, however, that  
427 this duty shall be limited by any other limitation on the duty to defend provided in this chapter.

428 (3) A claim under a policy providing liability coverage to a person who may be jointly  
429 and severally liable as a joint tortfeasor with the person covered under the policy of the insolvent  
430 member insurer that gives rise to the covered claim shall be considered to be a claim arising from  
431 the same facts, injury or loss that gave rise to the covered claim against the Fund.

432 (c) For purposes of this section, a claim under an insurance policy other than a life  
433 insurance policy shall include, but shall not be limited to:

434 (1) a claim against a health maintenance organization, a hospital plan corporation, a  
435 professional health service corporation or a disability insurance policy; and

436 (2) any amount payable by or on behalf of a self-insurer.

437 (d) The person insured by the insolvent member insurer's policy may not be pursued by  
438 or found liable to a third-party claimant for any amount paid to the third party by which the  
439 Fund's obligation is reduced pursuant to this section.

440 (e) Any person having a claim that may be recovered under more than 1 association  
441 similar to the Fund or its equivalent shall seek recovery first from the association of the place of  
442 residence of the insured; provided, that if it is a first-party claim for damage to property with a  
443 permanent location, the person shall seek recovery first from the association of the location of  
444 the property. If it is a workers' compensation claim, the person shall seek recovery first from the  
445 association of the residence of the claimant. Any recovery under this chapter shall be reduced by  
446 the amount of recovery from another insurance guaranty association or its equivalent.

447 Section 12. (a) The Fund shall not be obligated to pay any first-party claims by a high net  
448 worth insured.

449 (b)(1) Subject to paragraph (2), the Fund shall not be obligated to pay any third-party  
450 claim relating to a policy of a high net worth insured. This exclusion shall not apply to third-  
451 party claims against the high net worth insured where: (i) the insured has applied for or  
452 consented to the appointment of a receiver, trustee or liquidator for all or a substantial part of its  
453 assets; (ii) the insured has filed a voluntary petition in bankruptcy, filed a petition or an answer  
454 seeking a reorganization or arrangement with creditors or to take advantage of any insolvency  
455 law; or (iii) an order, judgment, or decree is entered by a court of competent jurisdiction, on the

456 application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition  
457 seeking reorganization of the insured or of all or substantial part of its assets.

458 (2) In the Fund's sole discretion and without assuming a duty to do so, the Fund may pay  
459 any cybersecurity insurance claims, workers' compensation claims, personal injury protection  
460 claims, no-fault claims and any other claims for ongoing medical payments to third-party  
461 claimants or their providers when covered by a policy of an insolvent insured on behalf of a high  
462 net worth insured.

463 (c) In all cases where the Fund pays any claim on behalf of a high net worth insured, the  
464 Fund shall have the right to recover from the high net worth insured all amounts paid by the  
465 Fund to or on behalf of such insured, whether for indemnity, defense or otherwise, as well as all  
466 allocated adjustment expenses related to such claims, and the Fund's reasonable legal fees and  
467 court costs in any action necessary to collect the Fund's reimbursement under this section.

468 (d) The Fund shall not be obligated to pay any claim that would otherwise be a covered  
469 claim that is an obligation to or on behalf of a person who has a net worth greater than that  
470 allowed by the insurance guaranty association law of the state of residence of the claimant at the  
471 time specified by that state's applicable law, and which association has denied coverage to that  
472 claimant on that basis.

473 (e) The Fund shall establish reasonable procedures subject to the approval of the  
474 commissioner for requesting financial information from insureds on a confidential basis for  
475 purposes of applying this section; provided, that the financial information may be shared with  
476 any other association similar to the Fund and the liquidator for the insolvent member insurer on  
477 the same confidential basis. Any request to an insured seeking financial information shall advise



478 the insured of the consequences of failing to provide the financial information. If an insured  
479 refuses to provide the requested financial information where it is requested and available, the  
480 Fund may, until such time as the information is provided, provisionally deem the insured to be a  
481 high net worth insured for the purpose of denying a claim under subsections (a) and (b).

482 (f) In any lawsuit contesting the applicability of this section where the insured has refused  
483 to provide financial information under the procedure established pursuant to subsection (e), the  
484 insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured  
485 fails to prove that its net worth at the relevant time was less than the applicable amount, the court  
486 shall award the Fund its full costs, expenses and reasonable attorneys' fees in contesting the  
487 claim.

488 Section 13. The Fund shall be exempt from payment of all fees and all taxes levied by the  
489 commonwealth or any of its subdivisions except taxes levied on real or personal property.

490 Section 14. (a) To aid in the detection and prevention of insurer insolvencies, the board of  
491 directors may, upon majority vote: (i) make recommendations to the commissioner on matters  
492 generally related to improving or enhancing regulation for solvency; and (ii) at the conclusion of  
493 any domestic insurer insolvency in which the Fund was obligated to pay covered claims, prepare  
494 and submit to the commissioner a report on the history and causes of the insolvency, based on  
495 the information available to the Fund.

496 (b) Reports and recommendations provided under this section shall not be considered  
497 public documents pursuant to clause twenty-sixth of section 7 of chapter 4.

498 Section 15. The rates and premiums charged for insurance policies to which this chapter  
499 applies shall include amounts sufficient to recoup over a reasonable length of time a sum equal to

500 the amounts paid to the Fund by the member insurer less any amounts returned to the member  
501 insurer by the Fund.

502 Section 16. There shall be no liability on the part of, and no cause of action of any nature  
503 shall arise against, a member insurer, the Fund or its agents or employees, the board of directors,  
504 any person serving as an alternate or substitute representative of any director, the commissioner  
505 or the commissioner's representatives for any action taken or any failure to act in the  
506 performance of their powers and duties under this chapter.

507 Section 17. (a) All proceedings in which the insolvent member insurer is a party or is  
508 obligated to defend a party in any court of the commonwealth shall, subject to waiver by the  
509 Fund in specific cases involving covered claims, be stayed for 6 months and such additional time  
510 as may be determined by the court from the date the insolvency is determined or an ancillary  
511 proceeding is instituted in the commonwealth, whichever is later, to permit proper defense by the  
512 Fund of all pending causes of action.

513 (b) The liquidator, receiver or statutory successor of an insolvent member insurer covered  
514 by this chapter shall permit access by the board or its authorized representative to such of the  
515 insolvent member insurer's records that are necessary for the board in carrying out its functions  
516 under this chapter with regard to covered claims. The liquidator, receiver or statutory successor  
517 shall provide the board or its representative with copies of those records upon the request by the  
518 board and at the expense of the board.

519 Section 18. (a) Notwithstanding any other provision in this chapter, an insurance policy  
520 issued by a member insurer and later allocated, transferred, assumed by or otherwise made the  
521 sole responsibility of another insurer, pursuant to a statute of the commonwealth providing for

522 the division of an insurance company or the statutory assumption or transfer of designated  
523 policies and under which there is no remaining obligation to the transferring entity by court order  
524 or novation, shall be considered to have been issued by a member insurer which is an insolvent  
525 member insurer for the purposes of this chapter in the event that the insurer to which the policy  
526 has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in  
527 liquidation.

528 (b) An insurance policy that was issued by a non-member insurer and later allocated,  
529 transferred, assumed by or otherwise made the sole responsibility of a member insurer under a  
530 state statute described in subsection (a) or by novation shall not be considered to have been  
531 issued by a member insurer for the purposes of this chapter.

532 Section 19. The Fund may bring an action against any third-party administrator, agent,  
533 attorney or other representative of the insolvent member insurer to obtain custody and control of  
534 all claims information, including files, records and electronic data, related to an insolvent  
535 member insurer that are appropriate or necessary for the Fund, or an association similar to the  
536 Fund in other states, to carry out its duties under this chapter. In such an action, the Fund shall  
537 have the absolute right through emergency equitable relief to obtain custody and control of all  
538 such claims information in the custody or control of such third-party administrator, agent,  
539 attorney or other representative of the insolvent member insurer, regardless of where such claims  
540 information may be physically located. In bringing such an action, the Fund shall not be subject  
541 to any defense, lien, whether possessory or otherwise, or other legal or equitable ground  
542 whatsoever for refusal to surrender such claims information that might be asserted against the  
543 liquidator of the insolvent member insurers. To the extent that litigation is required for the Fund  
544 to obtain custody of the claims information requested and it results in the relinquishment of

545 claims information to the Fund after refusal to provide the same in response to a written demand,  
546 the court shall award the Fund its costs, expenses and reasonable attorney's fees incurred in  
547 bringing the action. This section shall have no effect on the rights and remedies that the  
548 custodian of such claims information may have against the insolvent member insurers, so long as  
549 such rights and remedies do not conflict with the rights of the Fund to custody and control of the  
550 claims information under this chapter.

551           Section 20. No person shall make, publish or circulate, or cause to be made, published, or  
552 circulated, any statement that uses the existence of the Fund for the purposes of sale, solicitation  
553 or inducement to purchase any form of insurance within the scope of this chapter.

554           SECTION 4. The exemptions provided in section 12 of chapter 175D of the General  
555 Laws, inserted by section 3, shall apply to all liquidations commencing on or after July 1, 2025.