HOUSE DOCKET, NO. 3485 FILED ON: 1/20/2023

HOUSE . . . . . No. 962

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Daniel Cahill	*10th Essex*	*1/20/2023*
Jack Patrick Lewis	*7th Middlesex*	*1/9/2024*

HOUSE DOCKET, NO. 3485 FILED ON: 1/20/2023

HOUSE . . . . . No. 962

By Representative Cahill of Lynn, a petition (accompanied by bill, House, No. 962) of Daniel Cahill relative to the Massachusetts insurer's insolvency fund. Financial Services.

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:

SECTION 1. Said Chapter 175D is hereby amended by striking out Section 1, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 1. Application of the Chapter.

This Chapter shall apply to all kinds of direct insurance, including "cybersecurity insurance" that provides first and third party coverage, in a policy or endorsement, written on a direct, admitted basis, providing indemnity for losses and loss mitigation arising out of or relating to data privacy breaches, unauthorized information network security intrusions, computer viruses, ransomware, cyber extortion, identity theft, and similar exposures. This chapter shall not be applicable to the following:

A. Life, annuity, health, accident, or disability insurance;

B. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;

C. Fidelity or surety bonds, or any other bonding obligations;

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

E. Insurance of warranties or service contracts including insurance that provides for the repair, replacement or service of goods or property, indemnification for repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;

F. Title insurance;

G. Ocean marine insurance;

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

I. Any insurance provided by or guaranteed by government.

SECTION 2. Said Chapter 175D is hereby amended by striking out Section 2, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 2. Definitions

As used in this Chapter:

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

B. “Fund” means the Massachusetts Insurers Insolvency Fund established as provided by Section 3.

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

D. “Claimant” means any person instituting a covered claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

E. “Commissioner” means the Massachusetts Commissioner of Insurance.

F. “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

G. “Covered claim” means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Chapter applies issued by a member insurer, if the insurer becomes an insolvent insurer after the effective date of this Chapter and:

(a) The claimant or insured is a resident of the Commonwealth at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured or policyholder its principal place of business is located in the Commonwealth at the time of the insured event; or

(b) The claim is a first party claim for damage to property with a permanent location in the Commonwealth.

(2) Except as provided elsewhere in this Chapter, “covered claim” shall not include:

(a) Any amount awarded as punitive or exemplary damages;

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

(c) Any amount due any reinsurer, insurer, insurance pool or underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer may be asserted against a

person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in Section 5 of this Chapter;

(d) Any claims excluded pursuant to Section 10 due to the high net worth of an insured;

(e) Any first party claims by an insured that is an affiliate of the insolvent insurer;

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

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

(h) Any claims for interest; or

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

H. "Insolvent insurer" means an insurer that is licensed to transact insurance in the Commonwealth, either at the time the policy was issued, or when the insured event occurred, and against whom a final order of liquidation, which has not been stayed and to which there is no further right of appeal has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile after the effective date of this Chapter.

I. "Insured" means any named insured, any additional insured, any vendor, lessor or any other party identified as an insured under the policy.

J. (1) “Member insurer” means any person, except as provided in the ninth paragraph of section six of chapter three hundred and sixty-two of the acts of nineteen hundred and seventy-five, who:

(a) Writes any kind of insurance to which this Chapter applies under Section 1, including the exchange of reciprocal or inter-insurance contracts; and

(b) Is licensed to transact insurance in the Commonwealth.

(2) An insurer shall cease to be a member insurer in the Fund effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this Chapter applies, however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer’s license and assessments levied after the termination or expiration, which relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer’s license.

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

L. “Novation” means a transaction whereby existing policy obligations became the direct obligations of another insurer through consent of the policyholder and that thereafter the ceding insurer or entity initially obligated under the claims or policies is released by the policyholder from performing its claim or policy obligations. Consent may be express or implied based upon the circumstances, notice provided and conduct of the parties.

M. “Person” means any individual, aggregation of individuals, corporation, partnership or other legal entity, including governmental entities.

N. “Receiver” means liquidator, rehabilitator, conservator or ancillary receiver, as the context requires, including but not limited to any receiver appointed pursuant to Chapter 175:180(c).

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

SECTION 3. Section 3 of said Chapter 175D as appears in General Law of 2022 Official Edition is hereby amended by striking the word “six” and inserting in place thereof the word “four.”

SECTION 4. Said Chapter 175D is hereby amended by striking out Section 4, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 4. Board of Directors

A. The board of directors of the Fund shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The insurer members

of the board shall be selected by member insurers subject to the approval of the Commissioner; provided, however, that one member of the board shall be appointed by the Commissioner as representative of the insurance producers. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining insurer members subject to the approval of the Commissioner. For the purposes of this Section, the term "director" shall mean an individual serving on behalf of an insurer member of the board of directors or an insurance producer representative on the board of directors.

B. In approving selections to the board, the Commissioner shall consider among other things whether all member insurers are fairly represented.

C. Members of the board of directors may be reimbursed from the assets of the Fund for reasonable expenses incurred by them as members of the board of directors.

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

E. In the event that a director shall, because of illness, nonattendance at meetings or any other reason, be deemed unable to satisfactorily perform the designated functions as a director by missing three consecutive board meetings, the board of directors may declare the office vacant and the member or director shall be replaced in accordance with the provisions of Subsection A.

F. If the Commissioner has reasonable cause to believe that a director failed to disclose a known conflict of interest with his or her duties on the board, failed to take appropriate

action based on a known conflict of interest with his or her duties on the board, or has been indicted or charged with a felony, or misdemeanor involving moral turpitude, the Commissioner may suspend that director pending the outcome of an investigation or hearing by the Commissioner or the conclusion of any criminal proceedings. A company elected to the board may replace a suspended director prior to the completion of an investigation, hearing or criminal proceeding. In the event that the allegations are substantiated at the conclusion of an investigation, hearing or criminal proceeding, the office shall be declared vacant and the member or director shall be replaced in accordance with the provisions of Subsection A.

SECTION 5. Said Chapter 175D is hereby amended by striking out Section 5, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 5. Powers and Duties of the Fund

A. The Fund shall:

(1) (a) Be obligated to pay covered claims existing prior to the order of liquidation, arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

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

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

(iii) For liquidations commencing after January 1, 2023, an amount not exceeding $500,000 per claimant for all other covered claims.

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

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

(c) In no event shall the Fund 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 Chapter, for liquidations commencing after January 1, 2023, 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.`

For the purpose of filing a claim under this Subsection, notice of claims to the liquidator of the insolvent insurer shall be deemed notice to the Fund or its agent and a list of claims shall be periodically submitted to the Fund or association similar to the Fund in another state by the liquidator.

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

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to that extent, subject to the limitations provided in this Chapter including but not limited to Section 15, shall have all rights, duties and policy obligations of the insolvent insurer as if the insurer had not become insolvent, including but not limited to, the right to pursue and retain salvage and subrogation recoverable on covered claim obligations to the extent paid by the Fund. The Fund shall not be deemed the insolvent insurer for the purpose of conferring jurisdiction or for any reason not expressly stated in this Chapter. The extent of the Fund's subrogation rights and any other rights of reimbursement with respect to its covered claims payments shall not be limited as if the Fund were the insolvent company, but shall be determined independently by taking into account the Fund's rights under Section 11 of this Chapter.

(3) Assess insurers amounts necessary to pay the obligations of the Fund under Subsection A(1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency and other expenses authorized by this Chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. A member insurer may not be assessed in any one year on any account an amount greater than two percent (2%) of that member insurer’s net direct written premiums for the calendar year preceding the assessment. Member insurers may be also subject to a an additional assessment determined by the Board, not to exceed $1000 in any one year, for the purpose of covering administrative and other expenses of the Fund. If the maximum assessment, together with the other assets of the Fund, does not provide in any one year an amount sufficient to make all

necessary payments, the Fund's available assets shall be pro-rated and the unpaid portion shall be paid as soon thereafter as additional assets become available. The Fund shall pay claims in any order which it may deem reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The Fund may exempt or defer, in whole or in part, the assessment of a member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by a jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. Payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of the company, credited against future assessments.

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

(5) Notify claimants in the Commonweath as deemed necessary by the Commissioner and upon the Commissioner's request, to the extent records are available to the Fund.

(6) (a) Have the right to review and contest as set forth in this Subsection settlements, releases, compromises, waivers and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the order of liquidation. In an action to enforce settlements, releases

and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the order of liquidation, the Fund shall have the right to assert the following defenses, in addition to the defenses available to the insurer:

(i) The Fund is not bound by a settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or judgment was:

(I) Executed or entered within 12 months prior to the entry of an order of liquidation; or

(II) Executed by or taken against an insured or the insurer based on default, fraud, collusion or the insurer's failure to defend.

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

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

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

(7) Handle claims through its own employees, one or more insurers, or other persons designated as servicing facilities, which may include the receiver for the insolvent insurer. Designation of a servicing facility is subject to the approval of the Commissioner, but the designation may be declined by a member insurer.

(8) Reimburse each servicing facility for obligations of the Fund paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Fund and shall pay the other expenses of the Fund authorized by this Chapter.

(9) Submit, not later than 90 days after the end of the Fund's fiscal year, a financial report for the preceding fiscal year in a form approved by the Commissioner.

B. The Fund may:

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

(2) Borrow funds necessary to effect the purposes of this Chapter in accordance with the plan of operation. The board of directors shall have the authority to pledge all or an appropriate portion of future assessments as necessary to secure a loan that may be needed to pay

covered claims. Until all loans secured by any pledged assessments are fully satisfied, the board of directors shall assess the maximum allowable under Section 5 (a) (3).

(3) Sue or be sued, including but not limited to take any legal action to collect unpaid assessments from member insurers, any amounts due for subrogation or salvage, other insurance recoveries, large deductible reimbursements or to recovery any amount due from a high net worth policyholder. The Fund's power to sue includes, but is not limited to, the power and right to intervene as a party to the proceedings before any court that has jurisdiction over an insolvent insurer when the Fund is a creditor or potential creditor of the insolvent insurer's estate;

(4) Negotiate and become a party to contracts necessary to carry out the purpose of this Chapter;

(5) Perform other acts necessary or proper to effectuate the purpose of this Chapter;

(6) Refund to the member insurers in proportion to the contribution of each member insurer that amount by which the assets of the Fund exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the Fund exceed the reasonable amounts the board determines are appropriate to assure that the Fund has sufficient capacity to fulfill its statutory duties.

C. Suits involving the Fund:

(1) Except for actions by the receiver, all actions relating to or arising out of this Chapter against the Fund shall be brought in the courts in the Commonwealth. The courts shall have exclusive jurisdiction over all actions relating to or arising out of this Chapter against the Fund.

(2) The exclusive venue in any action by or against the Fund is in the Business Litigation Section of the Superior Court for Suffolk County, in Boston, Massachusetts. The Fund may, at its option, waive this venue as to specific actions filed by or against it.

SECTION 6. Said Chapter 175D is hereby amended by striking out Section 6, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 6. Plan of Operation

A.

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

(2) If the Fund fails to submit a suitable plan of operation within ninety (90) days following the effective date of this Chapter, or if at any time thereafter the Fund fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt reasonable rules necessary or advisable to effectuate the provisions of this Act. The rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Fund and approved by the Commissioner.

B. All member insurers shall comply with the plan of operation.

C. The plan of operation shall:

(1) Establish the procedures under which the powers and duties of the Fund under Section 5 will be performed;

(2) Establish procedures for handling assets of the Fund;

(3) Require that written procedures be established for the disposition of liquidating dividends or other monies received from the estate of the insolvent insurer;

(4) Require that written procedures be established to designate the amount and method of reimbursing members of the board of directors under Section 4;

(5) Establish procedures by which claims may be filed with the Fund and establish acceptable forms of proof of covered claims;

(6) Establish regular places and times for meetings of the board of directors;

(7) Require that written procedures be established for records to be kept of all financial transactions of the Fund, its agents and the board of directors;

(8) Provide that any member insurer aggrieved by any final action or decision of the Fund may appeal to the Commissioner within thirty (30) days after the action or decision;

(9) Establish the procedures under which selections for the board of directors will be submitted to the Commissioner;

(10) Contain additional provisions necessary or proper for the execution of the powers and duties of the Fund.

D. The plan of operation may provide that any or all powers and duties of the Fund, except those under Sections 5A(3) and 5B(2), are delegated to a corporation, association similar to the Fund or other organization which performs or will perform functions similar to those of this Fund or its equivalent in two (2) or more states. The corporation, association similar to the

Fund or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Fund. A delegation under this Subsection shall take effect only with the approval of both the board of directors and the Commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this Chapter.

SECTION 7. Said Chapter 175D is hereby amended by striking out Section 7, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 7. Authority of the Commissioner.

A. The Commissioner shall:

(1) Notify the Fund of the existence of an insolvent insurer not later than three (3) days after the Commissioner receives notice of the determination of the insolvency and furnish to the Fund a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction;

(2) Provide the Fund with a statement of the net direct written premiums of each member insurer upon request of the board of directors.

B. The Commissioner may:

(1) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the Commonwealth of a member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a fine on a member insurer that fails to pay an assessment when due. The fine shall not exceed five

percent (5%) of the unpaid assessment per month, except that a fine shall not be less than $200 per month;

(2) Revoke the designation of a servicing facility if the Commissioner finds claims are being handled unsatisfactorily.

(3) Examine, audit, or otherwise regulate the Fund in accordance with the Commissioner's authority under Section 4 of Chapter 175 of the General Laws as if it were a "domestic company."

An order of the Commissioner under this Chapter shall be subject to a public hearing and further judicial review in Superior Court.

SECTION 8. Said Chapter 175D is hereby amended by striking out Section 8, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 8. Coordination among Guaranty Funds.

A. The Fund may join one or more organizations of other state associations of similar purposes, to further the purposes and administer the powers and duties of the Fund. The Fund may designate one or more of these organizations to act as a liaison for the Fund and, to the extent the Fund authorizes, to bind the Fund in agreements or settlements with receivers of insolvent insurance companies or their designated representatives.

B. The Fund, in cooperation with other obligated or potentially obligated guaranty associations, or their designated representatives, shall reasonably coordinate and cooperate with receivers and regulators, or their designated representatives, in the Commonwealth and other states to promote efficiency and uniformity, including the use of Uniform Data Standards as

promulgated or approved by the National Association of Insurance Commissioners. The Fund may also authorize receivers to collect on its behalf amounts due to the Fund from policyholders and others persons.

SECTION 9. Said Chapter 175D is hereby amended by striking out Section 9, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 9. Effect of Paid Claims

A. Any person recovering under this Chapter shall be deemed to have assigned any rights under the policy to the Fund to the extent of his or her recovery from the Fund, but shall retain the right to recover from the liquidator of the insolvent insurer any amount of the claim covered by the policy but not paid by the Fund. Every insured or claimant seeking the protection of this Chapter shall cooperate with the Fund to the same extent as the person would have been required to cooperate with the insolvent insurer. The Fund shall have no cause of action against the insured of the insolvent insurer for sums it has paid out except any causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer (including but not limited to large deductible reimbursements provided in the policy) and except as provided in Subsection B and in Section 10.

B. The Fund shall have the right to recover from any person who is an affiliate of the insolvent insurer all amounts paid by the Fund on behalf of that person pursuant to the Chapter, whether for indemnity, defense or otherwise.

C. The Fund and any association similar to the Fund 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 Chapter or similar laws in other States and shall

receive dividends and other distributions at the priority set forth in Section 180F of Part One, Title XXII, Chapter 175 of the General Laws.

D. The Fund shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the Fund and estimates of anticipated claims on the Fund which shall preserve the rights of the Fund against the assets of the insolvent insurer in the Commonwealth and other tates and jurisdictions.

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

SECTION 10. Said Chapter 175D is hereby amended by striking out Section 10, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 10. High Net Worth Exclusion; Payment of Claims; Financial Information

A. For the purposes of this Section, “high net worth insured” shall mean any insured whose net worth exceeds $25 million on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured’s net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis. "High net worth insured" shall not include a federal, state or local government entity. The exemptions provided in this Section shall apply to all liquidations commencing on or after the effective date of this Act.

B. (1) The Fund shall not be obligated to pay any first party claims by a high net worth insured.

(2) Subject to Paragraph (3), the Fund shall not be obligated to pay any third party claim relating to a policy of a high net worth insured. This exclusion shall not apply to third party claims against the high net worth insured where:

(a) The insured has applied for or consented to the appointment of a receiver, trustee or liquidator for all or a substantial part of its assets;

(b) The insured has filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law; or

(c) An order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets.

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

(4) In all cases where the Fund pays any claim on behalf of a high net worth insured as defined by paragraph A. of this Section, the Fund shall have the right to recover from a high net worth insured all amounts paid by the Fund to or on behalf of such insured, whether for

indemnity, defense or otherwise, as well as all allocated adjustment expenses related to such claims, and the Fund's reasonable legal fees and court costs in any action necessary to collect the Fund's reimbursement under this Section.

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

D. The Fund shall establish reasonable procedures subject to the approval of the Commissioner for requesting financial information from insureds on a confidential basis for purposes of applying this Section, provided that the financial information may be shared with any other association similar to the Fund and the liquidator for the insolvent insurer on the same confidential basis. Any request to an insured seeking financial information must advise the insured of the consequences of failing to provide the financial information. If an insured refuses to provide the requested financial information where it is requested and available, the Fund may, until such time as the information is provided, provisionally deem the insured to be a high net worth insured for the purpose of denying a claim under Subsection B.

E. In any lawsuit contesting the applicability of this Section where the insured has refused to provide financial information under the procedure established pursuant to Subsection D, the insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured fails to prove that its net worth at the relevant time was less than the applicable amount,

the court shall award the Fund its full costs, expenses and reasonable attorneys' fees in contesting the claim.

SECTION 11. Said Chapter 175D is hereby amended by striking out Section 11, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 11. Exhaustion of Other Coverage.

A. (1) Any person having a claim against an insurer, shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the Fund. The requirement to exhaust shall apply without regard to whether the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy. If the Fund pays a covered claim without the exhaustion of all other coverage that could have been exhausted under this Section, the Fund shall have an independent right of recovery against each insurer whose coverage was not exhausted in the amount the Fund would not have had to pay if that insurer's coverage had been exhausted first.

(2) Any amount payable on a covered claim under this Chapter shall be reduced by the full applicable limits stated in the other insurance policy, or by the amount of the recovery under the other insurance policy as provided herein. The Fund shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits

applicable under the other insurance policy, or if there are no applicable stated limits under the policy, the Fund shall receive a full credit for the total recovery.

(a) The credit shall be deducted from the lesser of:

(i) The Fund's covered claim limit in Section 5 of this Chapter;

(ii) The amount of the judgment or settlement of the claim; or

(iii) The policy limits of the policy of the insolvent insurer.

(b) In no case, however, shall the obligation of the association exceed the covered claim limit embodied in Section 5 of this Chapter.

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

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

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

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

(b) Any amount payable by or on behalf of a self-insurer.

(6) The person insured by the insolvent insurer's policy may not be pursued by or found liable to a third-party claimant for any amount paid to the third party by which the Fund's obligation is reduced by the application of this Section.

B. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property. If it is a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this Chapter shall be reduced by the amount of recovery from another insurance guaranty association or its equivalent.

SECTION 12. Said Chapter 175D is hereby amended by striking out Section 12, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 12. Prevention of Insolvencies

To aid in the detection and prevention of insurer insolvencies:

A. The board of directors may, upon majority vote, make recommendations to the Commissioner on matters generally related to improving or enhancing regulation for solvency.

B. At the conclusion of any domestic insurer insolvency in which the Fund was obligated to pay covered claims, the board of directors may, upon majority vote, prepare a report

on the history and causes of the insolvency, based on the information available to the Fund and submit the report to the Commissioner.

C. Reports and recommendations provided under this Section shall not be considered public documents.

SECTION 13. Said Chapter 175D is hereby amended by striking out Section 13, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 13. Exemption from Taxes and Fees.

The association shall be exempt from payment of all fees and all taxes levied by the Commonwealth or any of its subdivisions except taxes levied on real or personal property.

SECTION 14. Said Chapter 175D is hereby amended by striking out Section 14, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 14. Recoupment of Assessments

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup over a reasonable length of time a sum equal to the amounts paid to the Fund by the insurer less any amounts returned to the insurer by the Fund.

SECTION 15. Said Chapter 175D is hereby amended by striking out Section 15, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 15. Immunity

There shall be no liability on the part of, and no cause of action of any nature shall arise against a member insurer, the Fund 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 Chapter.

SECTION 16. Said Chapter 175D is hereby amended by striking out Section 16, as appearing in the 2022 Official Edition, and inserting in place thereof the following Section:

Section 16. Stay of Proceedings

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

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

SECTION 17. Said Chapter 175D is hereby amended to inserting after Section 16 the following Sections:

Section 17. Restructuring Transactions and Preservation of Fund Coverage

A. Notwithstanding any other provision in this Chapter, an insurance policy issued by a member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of another insurer, pursuant to a state statute providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity by court order or novation, shall be considered to have been issued by a member insurer which is an Insolvent Insurer for the purposes of this Chapter in the event that the insurer to which the policy has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in liquidation.

B. An insurance policy that was issued by a non-member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of a member insurer under a state statute described in Subsection A or by novation shall not be considered to have been issued by a member insurer for the purposes of this Chapter.

Section 18. Recovery of Essential Information

The Fund shall also have the power to bring an action against any third party administrator, agent, attorney or other representative of the insolvent insurer to obtain custody and control of all files, records, and electronic data ("claims information") related to an insolvent company that are appropriate or necessary for the Fund, or a similar association in other states, to carry out its duties under this Chapter. In such a suit, the Fund shall have the absolute right through emergency equitable relief to obtain custody and control of all such claims information in the custody or control of such third party administrator, agent, attorney or other representative of the insolvent insurer, regardless of where such claims information may be physically located. In bringing such an action, the Fund shall not be subject to any defense, lien (possessory or

otherwise) or other legal or equitable ground whatsoever for refusal to surrender such claims information that might be asserted against the Liquidator of the insolvent insurers. To the extent that litigation is required for the Fund to obtain custody of the claims information requested and it results in the relinquishment of claims information to the Fund after refusal to provide the same in response to a written demand, the court shall award the Fund its costs, expenses and reasonable attorney's fees incurred in bringing the action. The provisions of this Section shall have no effect on the rights and remedies that the custodian of such claims information may have against the insolvent insurers, so long as such rights and remedies do not conflict with the rights of the Fund to custody and control of the claims information under this Chapter.

Section 19. Severability.

If any provision of this Chapter or the application thereof to any claimant, company or circumstance is held invalid, such invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid application or provision, and to this end the provisions of this Chapter are declared to be severable.

Section 20. – Prohibition against advertising of membership in the Fund

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