

SENATE No. 3003

The Commonwealth of Massachusetts

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

SENATE, December 26, 2024.

The committee on Senate Ways and Means to whom was referred the House Bill to modernize the Massachusetts insurer’s insolvency fund (House, No. 4772); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 3003.

For the committee,
Michael J. Rodrigues

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 175D of the General Laws is hereby amended by striking out
2 sections 1 and 2, as appearing in the 2022 Official Edition, and inserting in place thereof the
3 following 2 sections:-

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

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

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

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

15 “Commissioner”, the commissioner of insurance.

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

24 “Covered claim”, an unpaid claim, including a claim for unearned premiums, submitted
25 by a claimant, which arises out of, and is within the coverage and is subject to the applicable
26 limits of, an insurance policy issued by a member insurer to which this chapter applies if the
27 member insurer becomes an insolvent member insurer after July 1, 2025 and: (i) the claimant or
28 insured is a resident of the commonwealth at the time of the insured event; provided, that for
29 entities other than an individual, the residence or principal place of business of a claimant,
30 insured or policyholder shall be located in the commonwealth at the time of the insured event; or
31 (ii) the claim is a first-party claim for damage to property with a permanent location in the
32 commonwealth; provided, however, that “covered claim” shall not include: (A) any amount
33 awarded as punitive or exemplary damages; (B) any amount sought as a return of premium under
34 any retrospective rating plan; (C) any amount due any reinsurer, insurer, insurance pool or
35 underwriting association, health maintenance organization, hospital plan corporation,
36 professional health service corporation or self-insurer as subrogation recoveries, reinsurance
37 recoveries, contribution, indemnification or otherwise; provided, however, that no claim for any
38 amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance

39 organization, hospital plan corporation, professional health service corporation or self-insurer
40 shall be asserted against a person insured under a policy issued by an insolvent member insurer
41 other than to the extent the claim exceeds the association obligation limitations set forth in
42 section 5; (D) claims excluded pursuant to section 12 due to the high net worth of an insured; (E)
43 any first-party claims by an insured that is an affiliate of the insolvent member insurer; (F) any
44 fee or other amount relating to goods or services sought by or on behalf of any attorney or other
45 provider of goods or services retained by the insolvent member insurer or an insured prior to the
46 date it was determined to be insolvent; (G) any fee or other amount sought by or on behalf of any
47 attorney or other provider of goods or services retained by any insured or claimant in connection
48 with the assertion or prosecution of any claim, covered or otherwise, against the Fund; (H) any
49 claims for interest; or (I) any claim filed with the Fund or a liquidator for protection afforded
50 under the insured's policy for incurred-but-not-reported losses.

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

56 "Director", an individual serving on behalf of an insurer member on the board of
57 directors or an insurance producer representative on the board of directors.

58 "Fund", the Massachusetts Insurers Insolvency Fund established under section 3.

59 "High net worth insured", any insured whose net worth exceeds \$25,000,000 on
60 December 31 of the year prior to the year in which the insurer becomes an insolvent member

61 insurer; provided, however, that an insured's net worth on that date shall be deemed to include
62 the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a
63 consolidated basis; and provided further, that "high net worth insured" shall not include a
64 federal, state or local government entity.

65 "Insolvent member insurer", a member insurer against whom a final order of liquidation,
66 which has not been stayed and to which there is no further right of appeal, has been entered with
67 a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile
68 after July 1, 2025.

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

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

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

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

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

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

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

105 Section 2. This chapter shall apply to all kinds of direct insurance, including, but not
106 limited to, cybersecurity insurance; provided, however, this chapter shall not apply to:

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

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

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

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

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

119 (vi) title insurance;

120 (vii) ocean marine insurance;

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

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

125 SECTION 2. Section 3 of said chapter 175D, as so appearing, is hereby amended by
126 striking out, in line 5, the word “six” and inserting in place thereof the following figure:- 7.

127 SECTION 3. Said chapter 175D is hereby further amended by striking out sections 4 to
128 17, inclusive, as so appearing, and inserting in place thereof the following 17 sections:-

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

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

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

140 (d) Any director who is an insurer in receivership shall be terminated as a director,
141 effective as of the date of the entry of the order of receivership and the resulting vacancy on the
142 board shall be filled for the remainder of the unexpired term pursuant to subsection (a).

143 (e) If a director misses 3 consecutive board meetings, such director shall be deemed
144 unable to satisfactorily perform their duties as a director and the board of directors may declare
145 the office vacant and the vacancy shall be filled for the remainder of the unexpired term pursuant
146 to subsection (a).

147 (f) If the commissioner has reasonable cause to believe that a director failed to disclose a
148 known conflict of interest arising from their duties on the board or take appropriate action based
149 on a known conflict of interest or that a director has been indicted or charged with a felony or a
150 misdemeanor involving moral turpitude, the commissioner may suspend the director pending the
151 outcome of an investigation or hearing by the commissioner or the conclusion of any criminal
152 proceedings. A member insurer with a director elected to the board may replace a suspended
153 director representing the member insurer prior to the completion of an investigation, hearing or
154 criminal proceeding. If the allegations are substantiated at the conclusion of an investigation,
155 hearing or criminal proceeding, the office shall be declared vacant and the vacancy shall be filled
156 for the remainder of the unexpired term pursuant to subsection (a).

157 Section 5. (a)(1) The Fund shall be obligated to pay covered claims: (i) existing prior to
158 an order of liquidation of a member insurer; (ii) arising within 30 days after the order of
159 liquidation or before the policy expiration date if such expiration occurs less than 30 days after
160 the order of liquidation; or (iii) before the insured replaces the policy or causes its cancellation if

161 the insured does so within 30 days of the order of liquidation. The obligation shall be satisfied by
162 paying to the claimant an amount as follows:

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

165 (ii) for liquidations commencing on or after January 1, 2023, an amount not exceeding
166 \$50,000 per policy for a covered claim for the return of unearned premiums;

167 (iii) for liquidations commencing on or after January 1, 2023, an amount not exceeding
168 \$500,000 per claimant for all other covered claims; or

169 (iv) for liquidations commencing on or after January 1, 2023, an amount not exceeding
170 \$1,000,000 for all first-party property loss claims arising from a single occurrence under a policy
171 covering commercial or residential property.

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

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

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

186 (5) Any obligation of the Fund to defend an insured shall cease upon the Fund's payment
187 or tender of an amount equal to the Fund's covered claim obligation limit or the applicable
188 policy limit, whichever is lesser.

189 (b) The Fund shall be deemed the insurer to the extent of its obligation on the covered
190 claims and shall, to that extent subject to the limitations provided in this chapter have all rights,
191 duties and policy obligations of the insolvent member insurer as if the insurer had not become
192 insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation
193 recoverable on covered claim obligations to the extent paid by the Fund; provided, however, that
194 the Fund shall not be deemed the insolvent member insurer for the purpose of conferring
195 jurisdiction or for any reason not expressly stated in this chapter. The extent of the Fund's
196 subrogation rights and any other rights of reimbursement with respect to its covered claims
197 payments shall not be limited as if the Fund were the insolvent member insurer but shall be
198 determined independently by taking into account the Fund's rights under section 11.

199 (c)(1) The Fund shall assess insurers the amounts necessary to pay the obligations of the
200 Fund under subsection (a) subsequent to an insolvency, expenses of handling covered claims
201 subsequent to an insolvency and other expenses authorized by this chapter. The assessments of
202 each member insurer shall be in the proportion that the net direct written premiums of the
203 member insurer for the calendar year preceding the assessment bears to the net direct written

204 premiums of all member insurers for the calendar year preceding the assessment. Each member
205 insurer shall be notified of the assessment not later than 30 days before it is due; provided,
206 however, that a member insurer may not be assessed in any 1 year on any account an amount
207 greater than 2 per cent of that member insurer's net direct written premiums for the calendar year
208 preceding the assessment; provided further, that a member insurer may be also subject to an
209 additional assessment, not to exceed \$1,000 in any 1 year, determined by the board for the
210 purpose of covering administrative and other expenses of the Fund. If the maximum assessment,
211 together with the other assets of the Fund, does not provide in any 1 year an amount sufficient to
212 make all necessary payments, the Fund's available assets shall be pro-rated and the unpaid
213 portion shall be paid as soon thereafter as additional assets become available.

214 (2) The Fund may exempt or defer, in whole or in part, the assessment of a member
215 insurer, if the assessment would cause the member insurer's financial statement to reflect
216 amounts of capital or surplus less than the minimum amounts required for a certificate of
217 authority by a jurisdiction in which the member insurer is authorized to transact insurance;
218 provided, however, that during the period of deferment, no dividends shall be paid to
219 shareholders or policyholders. Deferred assessments shall be paid when the payment will not
220 reduce capital or surplus below required minimums. Payments shall be refunded to those
221 companies receiving larger assessments due to such deferment, or at the election of the member
222 insurer, credited against future assessments.

223 (d) The Fund shall investigate claims brought against the Fund and adjust, compromise,
224 settle and pay covered claims to the extent of the Fund's obligation and deny all other claims;
225 provided, however, that the Fund shall pay claims in any order that it may deem reasonable,
226 including the payment of claims as they are received from the claimants or in groups or

227 categories of claims. The Fund shall have the right to appoint, substitute and direct legal counsel
228 for the defense of covered claims.

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

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

238 (i) the Fund shall not be bound by a settlement, release, compromise or waiver executed
239 by an insured or the insurer or any judgment entered against an insured or the insurer by consent
240 or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or
241 judgment was: (A) executed or entered within 12 months prior to the entry of an order of
242 liquidation; or (B) executed by or taken against an insured or the insurer based on default, fraud,
243 collusion or the insurer's failure to defend;

244 (ii) if a court of competent jurisdiction finds that the Fund is not bound by a settlement,
245 release, compromise, waiver or judgment for any of the reasons described in clause (i) or any
246 other legally sufficient reason, the settlement, release, compromise, waiver or judgment shall be
247 set aside and the Fund may defend any covered claim on the merits; provided, however, that the
248 settlement, release, compromise, waiver or judgment shall not be considered as evidence of

249 liability or damages in connection with any claim brought against the Fund or any other party
250 under this chapter; and

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

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

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

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

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

269 (j) The Fund may:

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

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

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

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

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

292 (vi) perform other acts necessary or proper to carry out the purpose of this chapter.

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

296 The exclusive venue in any action by or against the Fund shall be in the business
297 litigation session of the superior court for Suffolk county; provided, however, that the Fund may
298 waive venue as to specific actions filed by or against it.

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

303 (2) If the Fund fails to submit a suitable plan of operation within 90 days after July 1,
304 2025, or if at any time thereafter the Fund fails to submit suitable amendments to the plan, the
305 commissioner shall, after notice and hearing, adopt reasonable rules necessary or advisable to
306 carry out this chapter. Such rules shall continue in force until modified by the commissioner or
307 superseded by a plan submitted by the Fund and approved by the commissioner.

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

309 (c) The plan of operation shall establish:

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

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

312 (iii) written procedures for the disposition of liquidating dividends or other monies
313 received from the estate of an insolvent member insurer;

314 (iv) written procedures to designate the amount and method of reimbursing members of
315 the board of directors under section 4 for reasonable expenses incurred in the performance of
316 their duties;

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

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

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

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

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

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

328 (3) The plan of operation may provide that any or all powers and duties of the Fund,
329 except those provided under subsection (c) of section 5 and clause (ii) of subsection (j) of said
330 section 5, shall be delegated to a corporation, association similar to the Fund or other
331 organization which performs or will perform functions similar to those of the Fund or its
332 equivalent in not less than 2 states. The corporation, association similar to the Fund or

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

338 Section 8. (a) The commissioner shall:

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

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

346 (b) The commissioner may:

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

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

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

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

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

365 (b) The Fund shall, in cooperation with organizations or associations similar to the Fund,
366 or their designated representatives, reasonably coordinate and cooperate with receivers and
367 regulators, or their designated representatives, in the commonwealth and other states to promote
368 efficiency and uniformity, including the use of Uniform Data Standards as promulgated or
369 approved by the National Association of Insurance Commissioners. The Fund may also authorize
370 receivers to collect on its behalf amounts due to the Fund from policyholders and others persons.

371 Section 10. (a) A person recovering under this chapter shall be deemed to have assigned
372 any rights under the policy to the Fund with respect to their recovery from the Fund but shall
373 retain the right to recover from the liquidator of the insolvent member insurer any amount of the
374 claim covered by the policy but not paid by the Fund. Every insured or claimant seeking the

375 protection of this chapter shall cooperate with the Fund to the same extent as the person insured
376 or claimant would have been required to cooperate with the insolvent member insurer. The Fund
377 shall have no cause of action against the insured of the insolvent member insurer for sums it has
378 paid out except any causes of action as the insolvent member insurer would have had if the sums
379 had been paid by the insolvent member insurer, including, but not limited to, large deductible
380 reimbursements provided in the policy, and except as provided in subsection (b) and in section
381 12.

382 (b) The Fund may recover from any person who is an affiliate of the insolvent member
383 insurer all amounts paid by the Fund on behalf of that person pursuant to this chapter, whether
384 for indemnity, defense or otherwise.

385 (c) The Fund and any association similar to the Fund in another state may file a claim in
386 the liquidation of an insolvent member insurer for any amounts paid by the Fund or association
387 similar to the fund on covered claim obligations as determined under this chapter or similar laws
388 in other states and shall receive dividends and other distributions at the priority of distribution set
389 forth in section 180F of chapter 175.

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

394 (e) The receiver, liquidator or statutory successor of an insolvent member insurer shall be
395 bound by settlements of claims by the Fund and shall grant, against the assets of the insolvent

396 member insurer, priority equal to that which the claimant would have been entitled in the
397 absence of this chapter.

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

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

419 insolvent member insurer; provided, however, that in no case, shall the obligation of the Fund
420 exceed the covered claim limit established in section 5.

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

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

429 (c) For purposes of this section, a claim under an insurance policy other than a life
430 insurance policy shall include, but shall not be limited to: (i) a claim against a health
431 maintenance organization, a hospital plan corporation, a professional health service corporation
432 or a disability insurance policy; and (ii) any amount payable by or on behalf of a self-insurer.

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

436 (e) A person having a claim that may be recovered under more than 1 association similar
437 to the Fund or its equivalent shall seek recovery first from the association of the place of
438 residence of the insured; provided, however, that if it is a first-party claim for damage to property
439 with a permanent location, the person shall seek recovery first from the association of the
440 location of the property. If it is a workers' compensation claim, the person shall seek recovery

441 first from the association of the residence of the claimant. Any recovery under this chapter shall
442 be reduced by the amount of recovery from another insurance guaranty association or its
443 equivalent.

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

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

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

460 (c) In all cases where the Fund pays any claim on behalf of a high net worth insured, the
461 Fund shall have the right to recover from the high net worth insured all amounts paid by the
462 Fund to or on behalf of such insured, whether for indemnity, defense or otherwise, as well as all

463 allocated adjustment expenses related to such claims, and the Fund's reasonable legal fees and
464 court costs in any action necessary to collect the Fund's reimbursement under this section.

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

470 (e) The Fund shall establish reasonable procedures subject to the approval of the
471 commissioner for requesting financial information from insureds on a confidential basis for
472 purposes of applying this section; provided, however, that the financial information may be
473 shared with any other association similar to the Fund and the liquidator for the insolvent member
474 insurer on the same confidential basis. Any request to an insured seeking financial information
475 shall advise the insured of the consequences of failing to provide the financial information. If an
476 insured refuses to provide the requested financial information where it is requested and available,
477 the Fund may, until such time as the information is provided, provisionally deem the insured to
478 be a high net worth insured for the purpose of denying a claim under subsections (a) and (b).

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

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

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

493 (b) Reports and recommendations provided under this section shall not be considered
494 public records and subject to disclosure pursuant to clause twenty-sixth of section 7 of chapter 4
495 and chapter 66.

496 Section 15. The rates and premiums charged for insurance policies to which this chapter
497 applies shall include amounts sufficient to recoup over a reasonable length of time a sum equal to
498 the amounts paid to the Fund by the member insurer less any amounts returned to the member
499 insurer by the Fund.

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

505 Section 17. (a) All proceedings in which the insolvent member insurer is a party or is
506 obligated to defend a party in any court of the commonwealth shall, subject to waiver by the

507 Fund in specific cases involving covered claims, be stayed for 6 months and such additional time
508 as may be determined by the court from the date the insolvency is determined or an ancillary
509 proceeding is instituted in the commonwealth, whichever is later, to permit proper defense by the
510 Fund of all pending causes of action.

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

517 Section 18. (a) Notwithstanding any other provision in this chapter, an insurance policy
518 issued by a member insurer and later allocated, transferred, assumed by or otherwise made the
519 sole responsibility of another insurer, pursuant to a statute of the commonwealth providing for
520 the division of an insurance company or the statutory assumption or transfer of designated
521 policies and under which there is no remaining obligation to the transferring entity by court order
522 or novation, shall be considered to have been issued by a member insurer which is an insolvent
523 member insurer for the purposes of this chapter in the event that the insurer to which the policy
524 has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in
525 liquidation.

526 (b) An insurance policy that was issued by a non-member insurer and later allocated,
527 transferred, assumed by or otherwise made the sole responsibility of a member insurer under a

528 statute of the commonwealth described in subsection (a) or by novation shall not be considered
529 to have been issued by a member insurer for the purposes of this chapter.

530 Section 19. The Fund may bring an action against any third-party administrator, agent,
531 attorney or other representative of the insolvent member insurer to obtain custody and control of
532 all claims information, including files, records and electronic data, related to an insolvent
533 member insurer that are appropriate or necessary for the Fund, or an association similar to the
534 Fund in other states, to carry out its duties under this chapter. In such an action, the Fund shall
535 have the absolute right through emergency equitable relief to obtain custody and control of all
536 such claims information in the custody or control of such third-party administrator, agent,
537 attorney or other representative of the insolvent member insurer, regardless of where such claims
538 information may be physically located. In bringing such an action, the Fund shall not be subject
539 to any defense, lien, whether possessory or otherwise, or other legal or equitable ground
540 whatsoever for refusal to surrender such claims information that might be asserted against the
541 liquidator of the insolvent member insurers. To the extent that litigation is required for the Fund
542 to obtain custody of the claims information requested and it results in the relinquishment of
543 claims information to the Fund after refusal to provide the same in response to a written demand,
544 the court shall award the Fund its costs, expenses and reasonable attorney's fees incurred in
545 bringing the action. This section shall have no effect on the rights and remedies that the
546 custodian of such claims information may have against the insolvent member insurers, so long as
547 such rights and remedies do not conflict with the rights of the Fund to custody and control of the
548 claims information under this chapter.

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

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