

## SPECIAL PURPOSE REINSURANCE VEHICLE MODEL ACT

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### Section 1. Purpose

This Act provides for the creation of Special Purpose Reinsurance Vehicles (“SPRVs”) exclusively to facilitate the securitization of one or more ceding insurers’ risk as a means of accessing alternative sources of capital and achieving the benefits of securitization. Investors in fully funded insurance securitization transactions provide funds that are available to the SPRV to secure the aggregate limit under an SPRV contract that provides coverage against the occurrence of a triggering event. The creation of SPRVs is intended to achieve greater efficiencies in conducting insurance securitizations, to diversify and broaden insurers’ access to sources of risk bearing capital and to make insurance securitization generally available on reasonable terms to as many U.S. insurers as possible.

**Drafting Note:** Under the terms of the typical securities underlying an insurance securitization transaction, proceeds from the issuance of securities are repaid to the investor on a specified maturity date with interest or dividends unless a triggering event occurs. The insurance securitization proceeds are available to pay the SPRV’s obligations to the ceding insurer if a triggering event occurs, as well as being available to satisfy the SPRV’s obligation to repay the insurance securitization investors if a triggering event does not occur. Insurance securitization transactions have been performed by alien companies to utilize efficiencies available to alien companies that are not currently available to domestic companies. This Act allows more efficiency in conducting insurance securitizations, allows domestic ceding insurers easier access to alternative sources of risk bearing capital, and promotes the benefits of insurance securitization to U.S. insurers.

### Section 2. Exemption from Insurance Laws within Limitations

- A. An SPRV is subject to the following sections of [insert state’s insurance code]: [insert sections of code providing commissioner’s general powers, including power to investigate insurance law violations, subpoena and examine documents and witnesses, conduct hearings, institute other legal action to enforce laws or orders, issue cease and desist orders, impose fines, handle documents and records, suspend or revoke licenses or certificates of authority, impose fees and other charges; and reference state’s examination law for enforcement of the act].

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

- B. No other provisions of this [insert state’s insurance code] shall be applicable to a SPRV organized under this Act, except as provided in this Act.

### Section 3. Definitions

For purposes of this Act, the following terms have the indicated meanings:

- A. “Aggregate limit” means the maximum sum payable to the ceding insurer under an SPRV contract.
- B. “Ceding insurer” means one or more insurers or reinsurers under common control that enters into an SPRV contract with an SPRV.
- C. “Control” (including the terms “controlling,” “controlled by” and “under common control with”) 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 any 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, in fact, exist. Notwithstanding the foregoing, for purposes of this Act, the fact that an SPRV exclusively provides reinsurance to a ceding insurer under an SPRV contract shall not by itself be sufficient grounds for a finding that the SPRV or the SPRV Organizer or owner is controlled by or under common control with the ceding insurer.
- D. “Fair value” means:
  - (1) As to cash, the amount thereof; and
  - (2) As to an asset other than cash:
    - (a) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;
    - (b) The quoted market price for the asset in active markets should be used if available; and
    - (c) If quoted market prices are not available, a value determined using the best information available considering values of like assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets or comparison to values of other asset classes the value of which have been historically related to the subject asset.
- E. “Fully funded” means that, with respect to an SPRV contract, the fair value of the assets held in trust by or on behalf of the SPRV under the SPRV contract on the date on which the SPRV contract is effected, equals or exceeds the aggregate limit as defined in this Act.
- F. “Indemnity trigger” means a transaction term by which the SPRV’s obligation to pay the ceding insurer for losses covered by an SPRV contract is triggered by the ceding insurer incurring a specified level of losses.
- G. “Insolvency” or “insolvent” means that the SPRV is unable to pay its obligations when they are due, unless the obligations are the subject of a bona fide dispute.
- H. “Non-indemnity trigger” means a transaction term by which the SPRV’s obligation to pay the ceding insurer under an SPRV contract arises from the occurrence or existence of some event or condition other than the ceding insurer incurring a specified level of losses under its insurance or reinsurance contracts.
- I. “Permitted investments” means those investments that meet the qualifications set forth in Section 17 of this Act.

- J. “Qualified U.S. financial institution” means, for purposes of meeting the requirements of a trustee as specified in Section 6, a financial institution that is eligible to act as a fiduciary of a trust, and:
- (1) Is organized, or, in the case of a U.S. branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof, and
  - (2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

**Drafting Note:** Because assets held in a fiduciary capacity are not subject to the claims of the trustee’s creditors, and because the trust departments of all U.S. financial institutions (including U.S. branch or agency offices of foreign banking organizations having fiduciary powers in the U.S.) are regulated, supervised and examined by the institution’s primary U.S. bank regulatory authority (federal or state), there is no need to apply additional standards measuring the financial condition or standing of the institution.

- K. “Special Purpose Reinsurance Vehicle” or “SPRV” means an entity domiciled in and organized under the laws of this state, which has received a Limited Certificate of Authority from the commissioner under this Act exclusively for the limited purpose of entering into and effectuating SPRV insurance securitizations, SPRV contracts and other related transactions permitted by this Act.
- L. “SPRV contract” means a contract between the SPRV and the ceding insurer pursuant to which the SPRV agrees to pay the ceding insurer an agreed amount upon the occurrence of a triggering event.
- M. “SPRV insurance securitization” means a package of related risk transfer instruments and facilitating administrative agreements by which proceeds are obtained by an SPRV through the issuance of securities, which proceeds are held in trust pursuant to the requirements of this Act to secure the obligations of the SPRV under an SPRV contract with one or more ceding insurers, wherein the SPRV’s obligation to return the full initial investment to the holders of such securities, pursuant to the transaction terms, is contingent upon the funds not being used to pay the obligations of the SPRV to the ceding insurers under the SPRV contract.
- N. “SPRV organizer” means one or more persons that have organized or intend to organize an SPRV, under authority obtained as specified in this Act.
- O. “SPRV securities” means the securities issued by an SPRV.
- P. “Triggering event” means an event or condition that, if and when it occurs or exists, obligates the SPRV to make a payment to the ceding insurer under the provisions of an SPRV contract.

#### **Section 4. Limited Certificate of Authority Required**

- A. In order to securitize one or more ceding insurers’ risks, an SPRV shall obtain a limited certificate of authority from the commissioner according to the provisions of this section.
- B. An SPRV organizer seeking to obtain a limited certificate of authority for a SPRV shall file an application with the commissioner. A complete application shall include the following:
- (1) An affidavit verifying that each prospective SPRV organizer meets the requirements of this Act;
  - (2) A representation that the prospective SPRV organizer intends to form an SPRV that shall operate in accordance with the requirements set forth in this Act;
  - (3) The proposed name of the SPRV;
  - (4) Biographical affidavits of all SPRV organizers setting forth their legal names, any names under which they have or are conducting their affairs, and any affiliations with other persons as defined in [insert a citation to the state insurance holding company system act], together with such other biographical information as the commissioner may request;
  - (5) The source and form of the minimum capital to be contributed to the SPRV;

- (6) Any persons with which the SPRV is or upon formation will be affiliated as defined in [insert the state's insurance holding company system act];
  - (7) The names and biographical affidavits of the proposed members of the board of directors and principal officers of the SPRV, setting forth their legal names, any names under which they have or are conducting their affairs and any affiliations with other persons as defined in [insert the name of the state insurance holding company system act], together with such other biographical information as the commissioner may request;
  - (8) A plan of operation, consisting of a description of the contemplated insurance securitization, the SPRV contract and related transactions, which shall include:
    - (a) Draft documentation or, at the discretion of the commissioner, a written summary, of all material agreements that will be entered into to effectuate the insurance securitization and the related SPRV contract, to include the names of the ceding insurers, the nature of the risks being assumed, and the maximum amounts, purpose and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;
    - (b) The investment strategy of the SPRV and a representation that the investment strategy complies with the investment requirements set forth in this Act and that the strategy will include investment practices or other provisions to preserve asset values, which will facilitate attainment of full funding during the term of the securitization with assets that can be monetized in response to a triggering event without a substantial loss in value; and
    - (c) A description of the method by which losses covered by the SPRV contract that may develop after the termination of the contract period are to be addressed under the provisions of the SPRV contract; and
    - (d) A representation that the trust agreement and the trusts holding assets that secure the obligations of the SPRV under the SPRV contract and the SPRV contract with the ceding insurers in connection with the contemplated insurance securitization will be structured in accordance with the requirements set forth in this act.
- C. The commissioner shall approve the application and issue a limited certificate of authority upon a finding that (1) the proposed plan of operation provides a reasonable expectation of a successful operation, (2) the terms of the SPRV contract and related transactions comply with this Act, (3) the proposed plan of operation is not hazardous to any ceding insurer or to policyholders and (4) the commissioner of the state of domicile of each ceding insurer has notified the commissioner in writing that it has not disapproved the transaction. In evaluating the expectation of a successful operation, the commissioner shall consider, among other factors, whether the proposed SPRV organizer, directors and officers are of known good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions or other insurance or business relations, with any person known to have been involved in the improper manipulation of assets, accounts or reinsurance. If the commissioner denies the application, he or she shall grant the prospective SPRV organizer a hearing upon request.
- Drafting Note:** Each state should review its legislative authority to ensure that its commissioner has the necessary jurisdiction to review and approve or disapprove proposed SPRV transactions by its domestic ceding insurers to non-domestic SPRVs.
- D. Upon approval by the commissioner of the application and the issuance of a limited certificate of authority, the SPRV may be acquired or formed and, in accordance with the approved plan of operation, the SPRV may enter into contracts and conduct other activities within the scope of the filed plan of operation.
  - E. The limited certificate of authority shall state that the SPRV's authorization to be involved in the business of reinsurance shall be limited only to the reinsurance activities that the SPRV is allowed to conduct pursuant to this Act.

- F. The SPRV organizer shall provide a complete set of the documentation of the insurance securitization to the commissioner upon closing of the transactions, including an opinion of legal counsel with respect to compliance with this Act and any other applicable laws as of the effective date of the transaction. Any material change of the SPRV's plan of operation described in Subsection B of this section, including but not limited to the issuance of new securities to continue the securitization activities of the SPRV pursuant to this Act after expiration and full satisfaction of the initial securitization transactions, shall require prior approval of the commissioner, provided that a change in the counterparty to swap transactions for an existing securitization as allowed under this Act shall not be deemed a material change.

**Section 5. Limited Purpose of SPRV**

SPRVs authorized under this Act are created for the limited purpose of entering into insurance securitization transactions with investors and related agreements to pay one or more ceding insurers agreed upon amounts under a SPRV contract upon the occurrence of triggering events related to the insurance business of the ceding insurer. A SPRV may not issue a contract for assumption of risk or indemnification of loss other than a SPRV contract.

**Drafting Note:** States may consider either authorizing, either directly by statute, or by providing rule-making authority, specific lines of business that may be ceded to a SPRV or restricting specific lines of business from being ceded to a SPRV.

**Section 6. Approved Transactions and Operation of SPRVs**

- A. SPRVs authorized under this Act may at any given time enter into and effectuate SPRV contracts with one or more ceding insurers, provided that the SPRV contracts obligate the SPRV to indemnify the ceding insurer for losses and that contingent obligations of the SPRV under the SPRV contracts are securitized in full through a single SPRV insurance securitization and are fully funded and secured with assets held in trust in accordance with the requirements included herein pursuant to agreements contemplated by this Act and invested in a manner that meets the criteria set forth in Section 17.

**Drafting Note:** The requirement that a SPRV indemnify the ceding insurer against losses may be expanded to allow an SPRV to enter into non-indemnity transactions with ceding insurers pursuant to regulations issued by the commissioner addressing the treatment of the portion of the risk that is not indemnity based, accounting, disclosure, risk based capital treatment, and assessing risks associated with such SPRV contract governing credit for these transactions.

- B. An SPRV may enter into agreements with third parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the SPRV contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding up-front or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to assure that the assets held in trust will be sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction or the obligations of the SPRV under the SPRV contract. In fulfilling its function, the SPRV shall adhere to the following requirements and shall, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines:

- (1) An SPRV shall have a distinct name, which shall include the designation "SPRV." The name of the SPRV shall not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this state.
- (2) Unless otherwise provided in the plan of operation, the principal place of business and office of any SPRV organized under this Act shall be located in this state.
- (3) The assets of an SPRV shall be preserved and administered by or on behalf of the SPRV to satisfy the liabilities and obligations of the SPRV incident to the insurance securitization and other related agreements, including the SPRV contract.
- (4) Assets of the SPRV that are pledged to secure obligations of the SPRV to a ceding insurer under an SPRV contract shall be held in trust and administered by a qualified U.S. financial institution. The qualified U.S. financial institution shall not control, be controlled by, or be under common control with, the SPRV or the ceding insurers.

- (5) The agreement governing any such trust shall create one or more trust accounts into which all pledged assets shall be deposited and held until distributed in accordance with the trust agreement. The pledged assets shall be held by the trustee at the trustee's office in the United States and may be held in certificated or electronic form.
- (6) The provisions for withdrawal by ceding insurers of assets from the trust shall be clean and unconditional, subject only to the following requirements:
  - (a) The ceding insurer shall have the right to withdraw assets from the trust account at any time, without notice to the SPRV, subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the SPRV;
  - (b) No other statement or document need be presented in order to withdraw assets, except the ceding insurer may be required to acknowledge receipt of withdrawn assets;
  - (c) The trust agreement shall indicate that it is not subject to any conditions or qualifications outside of the trust agreement;
  - (d) The trust agreement shall not contain references to any other agreements or documents; and
  - (e) No reference shall be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose.
- (7) The trust agreement shall be established for the sole use and benefit of the ceding insurer at least to the full extent of the SPRV's obligations to the ceding insurer under the SPRV contract. In the case of more than one ceding insurer, a separate trust agreement shall be entered into with each ceding insurer and a separate trust account shall be maintained for each ceding insurer.
- (8) The trust agreement shall provide for the trustee to:
  - (a) Receive assets and hold all assets in a safe place;
  - (b) Determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer may, whenever necessary, negotiate the assets, without consent or signature from the SPRV or any other person or entity;
  - (c) Furnish to the SPRV, the commissioner and the ceding insurer a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;
  - (d) Notify the SPRV and the ceding insurer, within ten (10) days, of any deposits to or withdrawals from the trust account;
  - (e) Upon written demand of the ceding insurer, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and
  - (f) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the ceding insurer.
- (9) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the ceding insurer.
- (10) The trust agreement may be made subject to and governed by the laws of any state, in addition to the requirements for the trust as provided in this Act, provided that the state is disclosed in the plan of operation filed with and approved, or deemed approved, by the commissioner.

- (11) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.
- (12) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.
  - (a) Notwithstanding the provisions of Subsection B(6)(c), (d) and (e) or B(14)(e) of this section, when a trust agreement is established in conjunction with an SPRV contract, then the trust agreement may provide that the ceding insurer shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the SPRV, for the following purposes:
    - (i) To pay or reimburse the ceding insurer amounts due to the ceding insurer under the specific SPRV contract, including but not limited to unearned premiums due to the ceding insurer, if not otherwise paid by the SPRV in accordance with the terms of such agreement; or
    - (ii) Where the ceding insurer has received notification of termination of the trust account, and where the SPRV's entire "obligations" under the specific SPRV contract remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the ceding insurer, in any qualified U.S. financial institution, apart from its general assets, in trust for uses and purposes specified in Subparagraph (a) of this paragraph as may remain executory after the withdrawal and for any period after the termination date. "Obligations" within the meaning of this subparagraph may, without duplication, include:
      - (I) Losses and loss expenses paid by the ceding insurer, but not recovered from the SPRV;
      - (II) Reserves for losses reported and outstanding;
      - (III) Reserves for losses incurred but not reported;
      - (IV) Reserves for loss expenses;
      - (V) Reserves for unearned premiums;
      - (VI) Any other amounts that, together with Items (I) to (V) of this subparagraph, represent the aggregate limit remaining under the SPRV contract if the period of coverage or the agreed upon period of loss development has yet to expire.
  - (b) The provisions to be included in the trust agreement pursuant to this paragraph may instead be included in the underlying SPRV contract.
- (13) An SPRV contract shall contain provisions that:
  - (a) Require the SPRV to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what recoverables or reserves, or both, the agreement is to cover;
  - (b) Stipulate that assets deposited in the trust account shall be valued according to their current fair value, and shall consist only of permitted investments;

- (c) Require the SPRV, prior to depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate any such assets without consent or signature from the SPRV or any other entity;
  - (d) Require that all settlements of account between the ceding insurer and the SPRV be made in cash or its equivalent; and
  - (e) Stipulate that the SPRV and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the SPRV contract, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the SPRV contract, and shall be utilized and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including (subject to the provisions of Section 16), but without further limitation, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the SPRV, only for the following purposes:
    - (i) To transfer all such assets into one or more trust accounts for the benefit of the ceding insurer pursuant to the terms of the SPRV contract and in compliance with this Act; and
    - (ii) To pay any other amounts that the ceding insurer claims are due under the SPRV contract.
- (14) The SPRV contract entered into by the SPRV may contain provisions that give the SPRV the right to seek approval from the ceding insurer to withdraw from the trust all or part of the assets contained in the trust and to transfer the assets to the SPRV, provided:
- (a) The SPRV shall, at the time of the withdrawal, replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of Section 17; and
  - (b) After the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPRV under the SPRV contract is no less than an amount needed to satisfy the fully funded requirement of the SPRV contract. The ceding insurer shall be the sole judge as to the application of these provisions, but shall not unreasonably nor arbitrarily withhold its approval.
- (15) The contract shall provide that investors in the SPRV agree that any obligation to repay principal, interest or dividends on the securities issued by the SPRV shall be reduced upon the occurrence of a triggering event, to the extent that the assets of the SPRV held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the SPRV under the SPRV contract.
- (16) Assets held by an SPRV in trust shall be valued at their fair value.
- (17) The proceeds from the sale of securities by the SPRV to investors shall be deposited with the trustee as contemplated by this Act, and shall be held or invested by the trustee in accordance with the requirements of Section 17.

- (18) An SPRV organized under this Act shall engage only in fully funded indemnity triggered SPRV contracts to support in full the ceding insurers' exposures assumed by the SPRV. However, an SPRV may engage in an SPRV contract that is non-indemnity triggered only after the commissioner, in accordance with the authority granted under Section 20 of this Act, adopts regulations addressing the treatment of the portion of the risk that is not indemnity based, to include accounting, disclosure, risk based capital treatment, and the manner in which risks associated with a non-indemnity based SPRV contract may be evaluated and managed. At no time may an SPRV enter into an SPRV contract that is not fully funded, whether indemnity triggered or non-indemnity triggered. Assets of the SPRV may be used to pay interest or other consideration on any outstanding debt or other obligation of the SPRV, and nothing in this paragraph shall be construed or interpreted to prevent an SPRV from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration.
- (19) In the SPRV insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPRV that will enter into the special purpose reinsurance securitization and the contracts or other documentation shall clearly disclose that the assets of the SPRV, and only those assets, are available to pay the obligations of that SPRV. Notwithstanding the foregoing, and subject to the provisions of this Act and any other applicable law or regulation, the failure to include such language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this Act.
- (20) Under no circumstances shall an SPRV be authorized to:
- (a) Issue or otherwise administer primary insurance policies;
  - (b) Have any obligation to the policyholders or reinsureds of the ceding insurer;
  - (c) Enter into an SPRV contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or
  - (d) Assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from an SPRV securitization that meets the requirements of this Act.
- (21) At the cessation of business of an SPRV, the limited certificate of authority granted by the commissioner shall expire and the SPRV shall no longer be authorized to conduct activities pursuant to this Act unless and until a new certificate of authority is issued pursuant to a new filing in accordance with Section 4.
- (22) It shall be unlawful for an SPRV to loan or otherwise invest, or place in custody, trust or under management any of its assets with, or to borrow money or receive a loan from (other than by issuance of the securities pursuant to an insurance securitization), or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption.

## **Section 7. Powers**

- A. An SPRV authorized under this Act shall have the necessary powers to enter into contracts and to conduct other commercial activities necessary to fulfill the purposes of this Act. These activities may include, but are not limited to, entering into SPRV contracts, issuing securities of the SPRV and complying with the terms thereof, entering into trust, swap and other agreements necessary to effectuate an insurance securitization in compliance with the limitations and pursuant to the authorities granted to the SPRV under this Act or the plan of operation approved or deemed approved by the commissioner.

- B. An SPRV organized or doing business under this Act shall be capable of suing or being sued, and may make or enforce contracts in relation to the business of the SPRV; may have and use a common seal, and in the name of the SPRV or by a trustee chosen by the board of directors, shall be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of its organization; and may by its board of directors, trustees, officers or managers, make bylaws and amendments thereto not inconsistent with the laws or the constitution of this state or of the United States. The bylaws shall define the manner of electing directors, trustees or managers and officers of the SPRV, together with their qualifications and duties and fixing the term of office.

**Section 8. Affiliation**

Notwithstanding the provisions of the [insert citation to insurance holding company system act] the SPRV, the SPRV organizer, or subsequent debt or equity investors in SPRV securities shall not be deemed affiliates of the ceding insurer by virtue of the SPRV contract between the ceding insurer and the SPRV, the securities of the SPRV or related agreements necessary to implement the SPRV insurance securitization. The SPRV may not be controlled by, may not control, or may not be under common control with, any ceding insurer that is a party to an SPRV contract.

**Section 9. Capitalization**

An SPRV shall have minimum initial capital of not less than \$5,000. All of the initial capital shall be received by the SPRV in cash. The minimum initial capital required and all other funds of the SPRV in excess of its minimum initial capital, including funds held in trust to secure the obligations of the SPRV pursuant to its obligations under the SPRV contracts, shall be invested as provided in Section 17.

**Section 10. Dividends**

The SPRV may not declare or pay dividends in any form to its owners unless the dividends do not decrease the capital of the SPRV below \$5,000 and, after giving effect to the dividends, the assets of the SPRV, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to meet its obligations. The dividends may be declared by the board of directors of the SPRV if the dividends would not violate the provisions of this Act or jeopardize the fulfillment of the obligations of the SPRV or the trustee pursuant to the SPRV insurance securitization, the SPRV contract or any related transaction. The provisions of [insert reference to the insurance holding company system act of the state of the SPRV's domicile] pertaining to dividends do not apply to such dividends.

**Section 11. Records and Financial Reports**

- A. The records of the SPRV shall be maintained in this state and shall be available for examination by the commissioner at any time. No later than five (5) months after the fiscal year end of the SPRV, the SPRV shall file with the commissioner an audit by a certified public accounting firm of the financial statements of the SPRV and the trust accounts.
- B. Each SPRV organized under this Act shall file with the commissioner not later than March 1 a statement of operations, to include a statement of income, a balance sheet and a detailed listing of invested assets, including identification of assets held in trust to secure the SPRV's obligations under the SPRV contract, for the year ending the prior December 31. The statements shall be prepared in accordance with [insert reference to applicable statutory accounting guidance for reinsurers adopted by this state] on forms required by the commissioner.
- C. The SPRV shall keep its books and records in such manner that its financial condition, affairs and operations can be ascertained and so that its financial statements filed with the commissioner can be readily verified and its compliance with the provisions of this Act determined. The books or records may be photographed, reproduced on film or stored and reproduced electronically.
- D. All books, records, documents, accounts and vouchers shall be preserved and kept available in this state for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the commissioner. The original records may, however, be kept and maintained outside this state if, according to a plan adopted by the SPRV's board of directors and approved by the commissioner, it maintains suitable records in lieu thereof.

**Section 12. Officers and Directors**

The directors of an SPRV shall elect officers that they deem necessary to carry out the purposes of the SPRV pursuant to this Act. The provisions of [insert the insurance code or relevant business corporation act, limited liability corporation act, limited partnership act, etc.] relating to the indemnification of officers and directors apply to and govern SPRVs organized under this Act.

- A. Each SPRV authorized to do business in this state shall notify the commissioner within thirty (30) days of the appointment or election of any new officers or directors.
- B. In cases where the commissioner deems that an officer or director does not meet the standards set forth in this section, he shall, after notice and hearing afforded to the officer or director, and after a finding that the officer or director is incompetent or untrustworthy or of known bad character, order the removal of the person. If the SPRV does not comply with a removal order within thirty (30) days, the commissioner may suspend that SPRV's limited certificate of authority until such time as the order is complied with.
- C. The SPRV shall make no loans to any SPRV organizer, owner, director, officer, manager or affiliate of the SPRV.

**Section 13. Fees and Taxes**

The commissioner may charge fees to reimburse the commissioner for expenses and costs incurred by the department of insurance incident to the examination of financial statements, review of the plan of operation and to reimburse other such activities of the commissioner related to the formation and ongoing operation of the SPRV. The SPRV shall not be subject to state premium or other taxes incidental to the operation of its business as long as the business remains within the limitations of this Act.

**Section 14. Dissolution**

An SPRV operating under this Act may be dissolved at any time by a vote of its board of directors, and after the action has been approved by the commissioner. No voluntary dissolution shall be effected or allowed until and unless all of the obligations of the SPRV pursuant to the insurance securitization have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the SPRV (including the settlement of all outstanding obligations), shall be made by the officers or directors of the SPRV and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved, or deemed approved, by the commissioner, the provisions for voluntary dissolution under the [insert reference to section of the state's insurance code or general business law that provides for and governs dissolution of insurers or other entities as appropriate] shall be followed to dissolve the SPRV.

**Section 15. Conservation, Rehabilitation or Liquidation**

- A. The provisions of [insert reference to the conservation, rehabilitation and liquidation statute] apply to an SPRV, except to the extent modified below.
- B. (1) Notwithstanding the provisions of [insert reference to the state's conservation, rehabilitation and liquidation act that is consistent with Section 16 of the NAIC Insurers Rehabilitation and Liquidation Model Act], the commissioner may apply by petition to the [insert reference to appropriate court of jurisdiction] for an order authorizing the commissioner to conserve, rehabilitate or liquidate an SPRV domiciled in this state solely on one or more of the following grounds:
  - (a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPRV intended to be used to pay amounts owed to the ceding insurer or the holders of SPRV securities; or
  - (b) The SPRV is insolvent and the holders of a majority in outstanding principal amount of each class of SPRV securities request or consent to conservation, rehabilitation or liquidation under this Act.

- (2) The court shall not grant relief under Paragraph (1)(a) of this subsection unless, after notice and a hearing, the commissioner, who shall have the burden of proof, establishes by clear and convincing evidence that relief should be granted.
- C. Notwithstanding any contrary provision in the insurance code of this state, the regulations promulgated under the insurance code of this state, or any other applicable law or regulation, upon any order of conservation, rehabilitation or liquidation of the SPRV, the receiver shall be bound to deal with the SPRV's assets and liabilities, in accordance with the requirements set forth in this Act.
- D. With respect to amounts recoverable under an SPRV contract, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the SPRV insurance securitization.
  - (1) Notwithstanding the provisions of [insert reference to the conservation, rehabilitation and liquidation act consistent with Section 5 of the NAIC Rehabilitation and Liquidation Model Act] or any other Section of the [insert reference to the conservation, rehabilitation and liquidation act], an application or petition under Section [insert conservation, rehabilitation and liquidation act provisions consistent with Sections 10, 11, 17, 20, 55, 58 or 59 of the NAIC Insurers Rehabilitation and Liquidation Model Act], or any temporary restraining order or injunction issued under any such section, with respect to a ceding insurer shall not prohibit the transaction of any business by an SPRV, including any payment by an SPRV made pursuant to an SPRV security, or any action or proceeding against an SPRV or its assets.
  - (2) Notwithstanding the provisions of [insert reference to the section of the conservation, rehabilitation and liquidation act that is consistent with Section 10 of the NAIC Insurers Rehabilitation and Liquidation Model Act], the commencement of a summary proceeding or other interim proceeding commenced prior to a formal delinquency proceeding with respect to an SPRV, and any order issued by the court thereunder, shall not prohibit the payment by an SPRV made pursuant to an SPRV security or SPRV contract or the SPRV from taking any action required to make the payment.
- E. Notwithstanding any other provision of [insert reference to the state's conservation, rehabilitation and liquidation act] or other state law:
  - (1) A receiver of a ceding insurer may not avoid a non-fraudulent transfer by a ceding insurer to an SPRV of money or other property made pursuant to an SPRV contract; and
  - (2) A receiver of an SPRV may not void a non-fraudulent transfer by the SPRV of money or other property made to a ceding insurer pursuant to an SPRV contract or made to or for the benefit of any holder of an SPRV security on account of the SPRV security.
- F. With the exception of the fulfillment of the obligations under an SPRV contract, and notwithstanding any other provisions of this Act or other law of this state to the contrary, the assets of an SPRV, including assets held in trust, shall not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this Act for any purpose, including, without limitation, distribution to creditors of the ceding insurer.
- G. Notwithstanding any other provision of this Act:
  - (1) The domiciliary receiver of an SPRV domiciled in another state shall be vested by operation of law with the title to all of the assets, property, contracts and rights of action, and all of the books, accounts and other records of the SPRV located in this state. The domiciliary receiver shall have the immediate right to recover all such vested property, assets, and causes of action of the SPRV located in this state.
  - (2) No ancillary proceeding may be commenced or prosecuted in this state against an SPRV domiciled in another state.

**Drafting Note:** The state should amend its conservation, rehabilitation and liquidation law to include an SPRV as a “person covered” as defined in the Section 2 of the NAIC Insurers Rehabilitation and Liquidation Model Act].

**Drafting Note:** A number of states require a liquidator to cancel policies within a pre-specified time period in the event of a liquidation. While reviewing the Plan of Operation, commissioners should consider the termination provisions, if any, of the securitization instruments in the event of the cancellation of all of the insurance policies underlying the securitization in order to assess whether any portion of the risk premium relating to those underlying policies should equitably be returned to the ceding insurer.

**Section 16. Not Subject to Guaranty Funds, Residual Market or Similar Arrangements**

- A. The SPRV or the activities, assets and obligations relating to the SPRV are not subject to the provisions of [insert reference to sections of the insurance code addressing life and health and property and casualty guaranty or insolvency funds], and an SPRV shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets or obligations of an SPRV or the ceding insurer.
- B. The SPRV shall not be required to participate in residual market, FAIR plan or other similar plans to provide insurance coverage, take out policies, assume risks, make capital contributions, pay or be otherwise obligated for assessments, surcharges or fees, or otherwise support or participate in such plans or arrangements.

**Section 17. Asset and Investment Limitations**

- A. Assets of the SPRV held in trust to secure obligations under the SPRV contract shall at all times be held in:
  - (1) Cash; and cash equivalents;
  - (2) Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets under statutory accounting convention in its state of domicile; or
  - (3) Any other form of security acceptable to the commissioner.
- B. In addition, the SPRV may enter into swap agreements or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing credit or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities (and related interest or principal payments) issued pursuant to an SPRV insurance securitization transaction or the SPRV’s obligations under the SPRV contract.

**Section 18. Credit for Reinsurance for the SPRV Contract**

An SPRV contract meeting the requirements under this Act shall be granted credit for reinsurance treatment or shall otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer under the (insert reference to the state’s equivalent of Section 3 of the NAIC Credit for Reinsurance Model Act) for the benefit of the ceding insurer, provided and only to the extent that:

- A. The fair value of the assets held in trust for the benefit of the ceding insurer equal or exceed the obligations due and payable to the ceding insurer by the SPRV under the SPRV contract;
- B. The assets are held in trust in accordance with the requirements set forth in this Act;
- C. The assets are administered in the manner and pursuant to arrangements as set forth in this Act; and
- D. The assets are held or invested in one or more of the forms allowed in Section 17.

**Section 19. No Transaction of an Insurance Business by Investors in Securities**

The securities issued by the SPRV pursuant to an SPRV insurance securitization shall not be deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to an SPRV insurance securitization or any holder of such securities shall not, by sole means of this investment or holding, be deemed to be transacting an insurance business in this state. The underwriters or selling agents (and their partners, directors, officers, members, managers, employees, agents, representatives and advisors) involved in an SPRV insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory or consulting business by virtue of their activities in connection therewith.

**Section 20. Authority to Adopt Regulations**

The commissioner may adopt regulations necessary to effectuate the purposes of this Act. Any regulations so adopted will not affect a SPRV insurance securitization in effect at the time of adoption.

**Section 21. Effective Date**

This Act shall become effective on [insert date].

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*2001 Proc. 3<sup>rd</sup> Quarter (adopted).*