

## PROJECT HISTORY - 2009

### PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION MODEL ACT (#540)

#### 1. Description of the Project, Issues Addressed, etc.

Following the adoption of the revised Insurer Receivership Model Act in 2005, the Receivership and Insolvency Task Force realized revisions were necessary to update the guaranty association model acts for changes in the industry since 1996. The purpose of the Model is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, and to the extent provided in the Model, minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to provide an association to assess the cost of such protection among insurers.

#### 2. Name of Group Responsible for Drafting the Model and States Participating

The Receivership and Insolvency (E) Task Force was charged with updating the Post-Assessment Property and Liability Insurance Guaranty Association Model Act. The 2008 members of the Task Force that adopted the revisions to the Model in March 2008 were: Delaware (Chair at the time of adoption), Texas (Vice-Chair), Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington.

The Task Force delegated the charge to its Receivership Model Act Revision (E) Working Group. The 2006 members of the Working Group that adopted the proposed revisions to the Model during a October 27, 2006 conference call were: Pennsylvania (Chair), Arkansas, Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Kentucky, Massachusetts, Missouri, Nebraska, New York, Ohio, Oklahoma, Tennessee, Texas, and Utah.

#### 3. Project Authorized by What Charge and Date First Given to the Group

Following the adoption of the revised Insurer Receivership Model Act in 2005, the Receivership and Insolvency Task Force drafted a charge to develop revisions to the NAIC's two guaranty association model acts, which was approved by the Financial Condition (E) Committee. The Task Force then delegated the charge to its Receivership Model Act Revision (E) Working Group, who first took up the Post Assessment Property and Liability Insurance Guaranty Association Model Act in late 2005.

During 2007, the NAIC created a new framework for considering and approving model law developments. The two factors necessary to receive authorization to continue drafting are: (1) whether the issue that is the subject of the model law necessitates a national standard and requires uniformity amongst all states; and (2) whether NAIC members are committed to devoting significant regulator and association resources to educate, communicate and support a model that has been adopted by the membership. Further drafting was suspended until the complete review and approval process was completed at the Task Force and parent committee levels.

On September 30, 2007, it was determined by the Executive (EX) Committee that the Property and Casualty Insurance Guaranty Association Model Act met the criteria for development as a Model Act by NAIC.

#### 4. A General Description of the Drafting Process and Due Process

The Receivership Model Act Revision Working Group began working on the Post Assessment Property and Liability Insurance Guaranty Association Model Act in late 2005 and continued reviewing it through October 2006, with the active participation of interested parties, including guaranty funds, their associations, insurers, other industry groups and a number of experienced receivership contractors. The draft Model had also been widely distributed via e-mail to various interested parties for an opportunity to submit written comments in late 2005 and throughout 2006, as well as posted for comment on the NAIC's Working Group Web page. Interested parties that provided written comment include: Allstate, Cantilo & Bennett LLP, Frost Brown Todd LLC, NCIGF, NOLHGA, Puerto Rico Property and Casualty Insurance Guaranty Association. Before the Working Group forwarded the proposed revisions to the Task Force, the Working Group decided during a September 11, 2006, meeting to provide additional guidance to the Task Force in the form of the Highlighted Issues memorandum. The memo was developed to make all participants aware of the Working Group's actions on the more controversial issues contained in the Model. During an October 27, 2006, call, the Working Group adopted the proposed revisions to go before the Task Force.

The Task Force provided an additional opportunity to address the issues in the Highlighted Issues memorandum, as well as other issues not discussed in the memo at the March 12, 2007, meeting. Interested parties that provided written comments include: AIA, Cantilo & Bennett LLP, Frost Brown Todd LLC, NCIGF, NOLHGA, and PCI. However, during a May 30, 2007, conference call, the Chair advised the Task Force that it would not be able to take a vote on the proposed revisions to the Model as in the interim the NAIC adopted a new model law process. The Task Force completed the appropriate review and paperwork according to the new process, which was subsequently exposed and adopted by E Committee. On September 30, 2007, the Executive (EX) Committee determined that the Model met the criteria for development as a Model Act.

During a November 28, 2007, conference call, the Task Force re-exposed the revised Model for comment to interested parties and regulators on issues that had not been previously submitted to the Task Force or Working Group. However, no new comments were received. During a March 30, 2008, meeting, the Task Force made amendments to some revisions initially proposed by the Working Group and then adopted a newly revised Model to be submitted to the Financial Condition (E) Committee.

On March 31, 2008, the Financial Condition (E) Committee received the Task Force's report and adopted a motion to expose the Model for comment. On May 23, 2008, an interim conference call took place to discuss interested party and regulator comments. A few proposed amendments to the proposed model regulation were submitted by regulators and adopted by the Financial Condition (E) Committee. In addition, the newly revised Model was adopted by the Committee.

## **5. A Discussion of the Significant Issues**

The following significant issues were discussed by the Receivership Model Act Revision Working Group and Receivership and Insolvency Task Force:

### Purpose and Construction

Section 2 and 4 of the current model was deleted from the proposed model by the Working Group based on concerns that the clauses have, in some cases, expanded the coverages provided by the guaranty associations. Two roll call votes were taken on this section by the Working Group. On December 3, 2005, the vote was 5-7 in favor of retaining the section. On May 25, 2006, the vote was 6-4 in favor of deleting it. On March 30, 2008, the Task Force voted 13-7 in favor of retaining Section 2 and 4 with comments from regulators suggesting that the aforementioned problems arose from specific issues with judges.

### Assumption of business from unlicensed carriers

Under the current model, policies assumed from an unlicensed carrier are not included within the definition of covered claims for the guaranty association. On May 9, 2006, by a vote of 7-4, these policies were included as covered claims by the Working Group. On March 30, 2008, the Task Force voted 11-9 in favor of excluding assumption of business from unlicensed carriers from the definition of covered claims.

### Policy protection claims by insureds

On August 31, 2006, a motion to remove the exclusion of claims based on IBNR from the definition of "Covered Claims" (§ 3H(2)(j)), was defeated by a vote of 8-6. Due to lack of a motion, the Task Force did not consider this issue.

### Coverage limits

On January 17, 2006, a straw vote was taken to determine if there was a consensus on changing the process for determining the coverage limit. Three members favored a fixed \$500,000 cap, three favored an adjustable cap starting at \$500,000, two favored an adjustable cap, and other members were opposed to any change. Because there was no consensus for a change, a fixed cap of \$500,000 was presented and adopted by voice vote in § 6A(1)(a)(iii). Due to lack of a motion, the Task Force did not consider this issue.

### Claims bar date

On February 7, 2006, a 25-month claims bar date was established in § 6A(1)(b) by a vote of 7-2 with one abstention by the Working Group. On August 31, 2006, the issue was reconsidered, and the 25-month bar date was deleted by a vote of 8-5 with one abstention by the Working Group. The language in the proposed Model requires the guaranty fund bar date to be the same as the estate bar date. The Working Group reached this conclusion in order to avoid confusion. Due to lack of a motion, the Task Force did not consider this issue.

### Receiver bound by GA claims determination.

On March 4, 2006, a motion to delete § 10C entirely was defeated 9-7 by the Working Group. A subsequent motion to delete only the last sentence of the subsection passed by a vote of 10-5 by the Working Group, so the Act is silent with regard to

whether the receiver would be bound by the guaranty association claim determination. On March 30, 2008, a motion to restore the language failed with a Task Force vote of 8 to 12.

#### Net worth exclusion.

During several meetings in June 2006, the Working Group discussed and approved each subsection of § 11. On July 11, 2006, this section was accepted by the Working Group as an optional section by a vote of 5-4 with one abstention. On July 18, 2006, a motion to reconsider the earlier vote was defeated by a vote of 8-4 by the Working Group; therefore, this section as drafted is included as optional. Though already enacted in some form in 35 states according to NCIGF, the existence and operation of the high net worth exclusion is still highly controversial. Due to lack of a motion, the Task Force did not consider this issue.

#### Immunity

On May 25, 2006, by a vote of 6-4, the Working Group adopted a revised version of § 16 on immunity of the guaranty association, its staff, members, directors, and the receiver and its staff. The immunity section in the prior model was substantially unlimited other than as it was interpreted by the courts. The new version of the provision removes immunity for the association for tort claims and for contract claims arising out of its statutory obligations. On March 30, 2008, the Task Force voted in favor of deleting the Working Group's revision given representations from NCIGF that the language is not necessary given the long-standing case law and adding the language could create some ambiguity and litigation.

### **6. Any Other Important Information**

As the Part A. Laws and Regulations of the NAIC Financial Regulation Standards and Accreditation Program only requires a regulatory framework such as contained in the NAIC's model acts on guaranty funds, the newly revised Property and Casualty Insurance Guaranty Association Model Act should not require a request to the Financial Regulation Standards and Accreditation (F) Committee to amend an accreditation standard.