

**2010 -- H 7696 SUBSTITUTE A AS AMENDED**

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LC01794/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2010**

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A N A C T

RELATING TO INSURANCE

Introduced By: Representative Michael J. Marcello

Date Introduced: February 25, 2010

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 27-34-1, 27-34-2, 27-34-3, 27-34-5, 27-34-6, 27-34-7, 27-34-8,  
2           27-34-9, 27-34-10, 27-34-11, 27-34-12, 27-34-14, 27-34-15, 27-34-16, 27-34-17 and 27-34-19 of  
3           the General Laws in Chapter 27-34 entitled "Rhode Island Insurers' Insolvency Fund" are hereby  
4           amended to read as follows:

5           **27-34-1. Short title.** -- This chapter shall be known and may be cited as the "~~Rhode~~  
6           ~~Island Insurers' Insolvency Fund Act~~" "Rhode Island Property & Casualty Insurance Guaranty  
7           Association Act".

8           **27-34-2. Purpose.** -- The purpose of this chapter is to provide a mechanism for the  
9           payment of covered claims under certain insurance policies to avoid excessive delay in payment  
10          and ~~to avoid~~ to the extent provided in this chapter, minimize financial loss to claimants or  
11          policyholders because of the insolvency of an insurer, and to ~~create an entity~~ provide an  
12          association to assess the cost of ~~the~~ such protection ~~and distribute it equitably~~ among ~~member~~  
13          insurers.

14          **27-34-3. Scope.** -- This chapter shall apply to all kinds of direct insurance, but shall not  
15          be applicable to the following:

16               (1) Life, annuity, health, or disability insurance;

17               (2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection  
18          against investment risks. For purposes of this section "financial guaranty insurance" include any  
19          insurance under which loss is payable upon proof of occurrence of any of the following events to

1 the damage of an insured claimant or obligee:

2 (i) Failure of any obligor or obligors on any debt instrument or other monetary obligation,  
3 including common or preferred stock, to pay when due the principal, interest, dividend or  
4 purchase price of such instrument or obligation, whether failure is the result of a financial default  
5 or insolvency and whether or not the obligation is incurred directly or as a guarantor by, or on  
6 behalf of, another obligor which has also defaulted;

7 (ii) Changes in the level of interest rates whether short-term or long-term, or in the  
8 difference between interest rates existing in various markets;

9 (iii) Changes in the rate of exchange of currency, or from the inconvertibility of one  
10 currency into another for any reason;

11 (iv) Changes in the value of specific assets or commodities, or price levels in general;

12 (3) Fidelity or surety bonds, or any other bonding obligations;

13 (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance  
14 or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor  
15 transaction. For purposes of this section "credit insurance" means insurance on accounts  
16 receivable;

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

22 (6) Title insurance;

23 (7) Ocean marine insurance, except that portion of the marine protection and indemnity  
24 insurance covering liability of the insured for personal injury, illness, or death to employees and  
25 insurance covering pleasure craft.

26 ~~(8) Commercial lines excess liability insurance~~

27 ~~(8)~~<sup>(9)</sup> Any transaction or combination of transactions between a person, including  
28 affiliates of the person, and an insurer, including affiliates of ~~the~~ such insurer, which involves the  
29 transfer of investment or credit risk unaccompanied by transfer of insurance risk; ~~and~~

30 (9) Any insurance provided by or guaranteed by government; or

31 (10) Any transaction or combination of transactions between a protected cell and the  
32 general account or another protected cell of a protected cell company organized under the  
33 Protected Cell Companies Act, chapter 64 of this title, as those terms are defined in this chapter.

34 **27-34-5. Definitions.** – As used in this chapter:

1 (1) "Account" means any one of the three (3) accounts created by section 27-34-6;

2 (2) "Affiliate" means a person, who directly or indirectly, through one or more  
3 intermediaries, controls, is controlled by, or is under common control with ~~an insolvent insurer~~  
4 another on December 31 of the year ~~next~~ immediately preceding the date the insurer becomes an  
5 insolvent insurer;

6 (3) "Association" means the Rhode Island insurance guaranty association created under  
7 section 27-34-6.

8 (4) "Association similar to the association" means any guaranty association, security fund  
9 or other insolvency mechanism that affords protection similar to that of the association. The term  
10 shall also include any property and casualty insolvency mechanism that obtains assessments or  
11 other contributions from insurers on a pre-insolvency basis.

12 (5) "Assumed claims transaction" means the following:

13 (i) Policy obligations that have been assumed by the insolvent insurer, prior to the entry  
14 of a final order of liquidation, through a merger between the insolvent insurer and another entity  
15 obligated under the policies, and for which assumption consideration has been paid to the  
16 applicable guaranty associations, if the merged entity is a non-member insurer;

17 (ii) Policy obligations that have been assumed by the insolvent insurer, prior to the entry  
18 of a final order of liquidation, pursuant to a plan, approved by the domestic commissioner of the  
19 assuming insurer, which:

20 (A) Transfers the direct policy obligations and future policy renewals from one insurer to  
21 another insurer; and

22 (B) For which assumption consideration has been paid to the applicable guaranty  
23 associations, if the assumption is from a non-member insurer.

24 (C) For purposes of this section the term non-member insurer also includes a self-insurer,  
25 non-admitted insurer and risk retention group; or

26 (iii) An assumption reinsurance transaction in which all of the following has occurred:

27 (A) The insolvent insurer assumed, prior to the entry of a final order of liquidation, the  
28 claim or policy obligations of another insurer or entity obligated under the claims or policies;

29 (B) The assumption of the claim or policy obligations has been approved, if such  
30 approval is required, by the appropriate regulatory authorities; and

31 (C) As a result of the assumption, the claim or policy obligations became the direct  
32 obligations of the insolvent insurer through a novation of the claims or policies.

33 (6) "Assumption Consideration" shall mean the consideration received by a guaranty  
34 association to extend coverage to the policies assumed by a member insurer from a non-member

1 insurer in any assumed claims transaction including liabilities that may have arisen prior to the  
2 date of the transaction. The assumption consideration shall be in an amount equal to the amount  
3 that would have been paid by the assuming insurer during the three (3) calendar years prior to the  
4 effective date of the transaction to the applicable guaranty associations if the business had been  
5 written directly by the assuming insurer.

6 (i) In the event that the amount of the premiums for the three (3) year period cannot be  
7 determined, the assumption consideration will be determined by multiplying one hundred thirty  
8 percent (130%) against the sum of the unpaid losses, loss adjustment expenses, and incurred but  
9 not reported losses, as of the effective date of the assumed claims transaction, and then  
10 multiplying such sum times the applicable guaranty association assessment percentage for the  
11 calendar year of the transaction.

12 (ii) The funds paid to a guaranty association shall be allocated in the same manner as any  
13 assessments made during the three (3) year period. The guaranty association receiving the  
14 assumption consideration shall not be required to recalculate or adjust any assessments levied  
15 during the prior three (3) calendar years as a result of receiving the assumption consideration.  
16 Assumption consideration paid by an insurer may be recouped in the same manner as other  
17 assessments made by a guaranty association.

18 (7)(3) "Claimant" means ~~any insured making a first party claim or~~ any person instituting  
19 a ~~liability covered~~ claim; provided that no person who is an affiliate of the insolvent insurer may  
20 be a claimant;

21 ~~(4) "Commercial lines excess liability insurance" means any commercial lines liability~~  
22 ~~insurance written over an underlying policy with policy limits of at least three hundred thousand~~  
23 ~~dollars (\$300,000) or a self-insured retention of at least three hundred thousand dollars~~  
24 ~~(\$300,000);~~

25 ~~(5) "Commercial lines insurance" means any insurance to which this chapter applies~~  
26 ~~which is not personal lines insurance;~~

27 (8)(6) "Commissioner" means the ~~commissioner of insurance~~ director of the department  
28 of business regulation or his or her designee;

29 (9)(7) "Control" means the possession, direct or indirect, of the power to direct or cause  
30 the direction of the management and policies of a person, whether through the ownership of  
31 voting securities, by contract other than a commercial contract for goods or nonmanagement  
32 services, or otherwise, unless the power is the result of an official position with, or corporate  
33 office held by, the person. Control shall be presumed to exist if any person, directly or indirectly,  
34 owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or

1 more of the voting securities of any other person. This presumption may be rebutted by a showing  
2 that control does not exist in fact;

3 ~~(10)(8)~~ "Covered claim" means ~~the following~~:

4 ~~(i) an~~ An unpaid claim, including one for unearned premiums, submitted by a claimant,  
5 which arises out of and is within the coverage and subject to the applicable limits of an insurance  
6 policy to which this chapter applies ~~issued by an insurer~~ if the insurer becomes an insolvent  
7 insurer after the effective date of this chapter and the policy was either issued by the insurer or  
8 assumed by the insurer in an assumed claims transaction, and:

9 ~~(A)(i)~~ The claimant or insured is a resident of this state at the time of the insured event;  
10 provided, that for entities other than an individual, the residence of a claimant, ~~or~~ insured or  
11 policyholder is the state in which its principal place of business is located at the time of the  
12 insured event; or

13 ~~(B)(ii)~~ The claim is a first-party claim for damage to property ~~from which the claim~~  
14 ~~arises is permanently located~~ with a permanent location in this state.

15 ~~(ii)~~ Except as provided elsewhere in this section, ~~"Covered claim"~~ "covered claim" shall  
16 not include ~~any amount~~:

17 (A) Any amount awarded ~~Awarded~~ as punitive or exemplary damages;

18 (B) Any amount sought ~~Sought~~ as a return of premium under any retrospective rating  
19 plan; or

20 (C) Any amount due ~~Due~~ any reinsurer, insurer, insurance pool, or underwriting  
21 association, health maintenance organization, hospital plan corporation, professional health  
22 service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution,  
23 indemnification or otherwise. ~~No ; provided, that a~~ claim for any amount, due any reinsurer,  
24 insurer, insurance pool, underwriting association, health maintenance organization, hospital plan  
25 corporation, professional health service corporation or self-insurer may be asserted against a  
26 person insured under a policy issued by an insolvent insurer ~~which has become an insolvent~~  
27 ~~insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool,~~  
28 ~~or underwriting association, would be a "covered claim", may be filed directly with the receiver~~  
29 ~~of the insolvent insurer, but in no event may any the claim be asserted against the insured of the~~  
30 ~~insurer~~ other than to the extent the claim exceeds the association obligation limitations set forth in  
31 section 27-34-8 of this chapter;

32 (D) Any claims excluded pursuant to section 27-34-11.5 due to the high net worth of an  
33 insured;

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

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

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

7 (H) Any claims for interest; or

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

10 ~~(9) "Fund" means the Rhode Island insurers' insolvency fund created under section 27-~~  
11 ~~34-6;~~

12 ~~(10)~~(11) "Insolvent insurer" means an insurer licensed to transact insurance in this state  
13 ~~any of the kinds of insurance within the scope of this chapter~~, either at the time the policy was  
14 issued; when the obligation with respect to the covered claim was assumed under an assumed  
15 claims transaction; or when the insured event occurred, and against ~~which an~~ whom a final order  
16 of liquidation ~~with a finding of insolvency~~ has been entered after the effective date of this chapter  
17 with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile  
18 ~~or in this state under the provision(s) of chapter 14.3 of this title which order of liquidation has~~  
19 ~~not been stayed or been the subject of a writ of supersedeas or other comparable order;~~

20 (12) "Insured" means any named insured, any additional insured, any vendor, lessor or  
21 any other party identified as an insured under the policy.

22 (13) "Line of credit" means an irrevocable stand-by commitment whereby the association  
23 or member insurer and a qualified financial institution or group of qualified financial institutions  
24 enter into a formal and binding contract in which the qualified financial institution or group of  
25 qualified financial institutions agree to lend a certain amount of money within a stated period of  
26 time.

27 ~~(14)~~(14) (a) "Member insurer" means any person who:

28 (i) Writes any kind of insurance to which this chapter applies, under section 27-34-3,  
29 including the exchange of reciprocal or interinsurance contracts; ~~and~~

30 (ii) Is licensed to transact insurance in this state; and

31 (b) An insurer shall cease to be a member insurer effective on the day following the  
32 termination or expiration of its license to transact the kinds of insurance to which this chapter  
33 applies, however, the insurer shall remain liable as a member insurer for any and all obligations,  
34 including obligations for assessments levied prior to the termination or expiration of the insurer's

1 license and assessment levied after the termination or expiration, which relate to any insurer that  
2 became an insolvent insurer prior to the termination or expiration of the insurer's license.

3 (iii) Is not otherwise excepted from membership by statute or regulation.

4 ~~(15)(12)~~ " Net direct written premiums" means direct gross premiums written in this  
5 state on insurance policies to which this chapter applies, including policy and membership fees,  
6 less the following amounts: (i) Return ~~return~~ premiums , (ii) Premiums on ~~those~~ policies not taken  
7 and (iii)Dividends ~~dividends or unabsorbed premiums~~ paid or credited to policyholders on ~~the~~  
8 that direct business. "Net direct written premiums" does not include premiums on contracts  
9 between insurers or reinsurers;

10 (16) "Novation" means that the assumed claim or policy obligations became the direct  
11 obligations of the insolvent insurer through consent of the policyholder and that thereafter the  
12 ceding insurer or entity initially obligated under the claims or policies is released by the  
13 policyholder from performing its claim or policy obligations. Consent may be express or implied  
14 based upon the circumstances, notice provided and conduct of the parties.

15 (17) "Ocean Marine insurance" means any form of insurance, regardless of the name,  
16 label or marketing designation of the insurance policy, which insures against maritime perils or  
17 risks and other related perils or risks, which are usually insured against by traditional marine  
18 insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity.  
19 Perils and risk insured against include without limitation loss, damage, expense or legal liability  
20 of the insured for loss, damage or expense arising out of or incident to ownership, operation,  
21 chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use  
22 in ocean or inland waterways for commercial purposes, including liability of the insured for  
23 personal injury, injury, illness or death or for loss or damage to the property of the insured or  
24 another person.

25 ~~(18)(13)~~ "Person" means any individual, aggregation of individuals, corporation,  
26 partnership, ~~association,~~ or ~~voluntary organization~~ other entity;

27 ~~(14) "Personal lines insurance" means any insurance to which this chapter applies issued~~  
28 ~~for personal, family, or household purposes;~~

29 ~~(15) "Pleasure craft" means watercraft, other than a seaplane on the water or a houseboat,~~  
30 ~~not greater than thirty five (35) feet in length used solely for pleasure and not used for:~~

31 ~~(i) Charter or hire; or~~

32 ~~(ii) To carry persons or property for fee or any commercial use; and~~

33 (19) "Qualified financial institution" shall have the same meaning as the term in section  
34 27-1.1-3.

1 (20) "Receiver" means liquidator, rehabilitator, conservator or ancillary receiver, as the  
2 context requires.

3 (21) "Self-insurer" means a person that covers its liability through a qualified individual  
4 or group self-insurance program or any other formal program created for the specific purpose of  
5 covering liabilities typically covered by insurance.

6 ~~(16)~~(22) "Self-insured retention" means:

- 7 (i) Any fund or other arrangement to pay claims other than by an insurance company; or  
8 (ii) Any arrangement under which an insurance company has no obligation to pay claims  
9 on behalf of an insured if it is not reimbursed by the insured.

10 **27-34-6. Creation of the fund** ~~Creation of the fund~~. -- There is created a  
11 nonprofit unincorporated legal entity to be known as the ~~"Rhode Island insurers' insolvency fund"~~  
12 "Rhode Island Property & Casualty Insurance Guaranty Association", such entity formerly  
13 known as the "Rhode Island insurers' insolvency fund". All insurers defined as member insurers  
14 in subdivision 27-34-5(12) shall be and remain members of the ~~fund~~ association as a condition of  
15 their authority to transact insurance in this state. The ~~fund~~ association shall perform its functions  
16 under a plan of operation established and approved under section 27-34-9 and shall exercise its  
17 powers through a board of directors established under section 27-34-7. For the purposes of  
18 administration and assessment, ~~the fund there~~ shall be ~~divided into~~ three (3) separate accounts: (1)  
19 the workers' compensation insurance account; (2) the automobile insurance account; and (3) the  
20 account for all other insurance to which this chapter applies.

21 **27-34-7. Board of directors.** -- (a) The board of directors of the ~~fund~~ association shall  
22 consist of not less than five (5) nor more than ~~nine (9)~~ eleven (11) persons serving terms as  
23 established in the plan of operation. The members of the board shall be selected by member  
24 insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for  
25 the remaining period of the term by a majority vote of the remaining ~~board insurer~~ members  
26 subject to the approval of the commissioner. Two (2) persons, may be public representatives, and  
27 may be appointed by the commissioner to the board of directors. Vacancies of positions held by  
28 public representatives shall be filled by the commissioner. A public representative may not be an  
29 officer, director or employee of an insurance company or any person engaged in the business of  
30 insurance. For the purposes of this section, term "director" shall mean an individual serving on  
31 behalf of an insurer member of the board of directors or a public representative on the board of  
32 directors.

33 (b) In approving selections to the board, the commissioner shall consider among other  
34 things whether all member insurers are fairly represented.

1 (c) Members of the board of directors may be reimbursed from the assets of the ~~fund~~  
2 association for expenses incurred by them as members of the board of directors.

3 (d) Any board member who is an insurer in receivership shall be terminated as a board  
4 member, effective as of the date of the entry of the order of receivership. Any resulting vacancies  
5 on the board shall be filled for the remaining period of the term in accordance with the provisions  
6 of subsection (a).

7 (e) In the event that a director shall, because of illness, nonattendance at meetings or any  
8 other reason, be deemed unable to satisfactorily perform the designated functions as a director by  
9 missing three (3) consecutive board meetings, the board of directors may declare the office vacant  
10 and the member or director shall be replaced in accordance with the provisions of subsection (a).

11 (f) If the commissioner has reasonable cause to believe that a director failed to disclose a  
12 known conflict of interest with his or her duties on the board, failed to take appropriate action  
13 based on a known conflict or interest with his or her duties on the board, or has been indicted or  
14 charged with a felony, or misdemeanor involving moral turpitude, the commissioner may suspend  
15 that director pending the outcome of an investigation or hearing by the commissioner or the  
16 conclusion of any criminal proceedings. A company elected to the board may replace a suspended  
17 director prior to the completion of an investigation, hearing or criminal proceeding. In the event  
18 that the allegations are substantiated at the conclusion of an investigation, hearing or criminal  
19 proceeding, the office shall be declared vacant and the member or director shall be replaced in  
20 accordance with the provisions of subsection (a).

21 **27-34-8. Powers and duties of the fund.-- Powers and duties of the association. --** (a)

22 The ~~fund~~ association shall:

23 (1) (i) Be obligated to pay covered claims existing prior to the ~~determination order~~ of ~~the~~  
24 ~~insolvency liquidation; of a member insurer or~~ arising within sixty (60) days after the  
25 ~~determination order~~ of ~~the insolvency liquidation~~ or before the policy expiration date if less than  
26 sixty (60) days after the ~~determination order~~ of ~~insolvency liquidation~~ or before the insured  
27 replaces the policy or causes its cancellation if ~~he or she~~ the insured does so within sixty (60)  
28 days of the ~~determination order of liquidation~~. The obligations shall be satisfied by paying to the  
29 claimant an amount as follows:

30 (A)⊕ The full amount of a covered claim for benefits under a workers' compensation  
31 insurance coverage;

32 (B)⊕ An amount not exceeding ten thousand dollars (\$10,000), per policy for a covered  
33 claim for the return of unearned premium;

34 (C)⊕ An amount not exceeding five hundred thousand dollars (\$500,000), per claimant

1 for all other covered claims for insolvencies occurring on or after January 1, 2008 and an amount  
2 not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered  
3 claims for insolvencies occurring prior to January 1, 2008.

4 (ii) In no event shall the ~~fund~~ association be obligated to pay a claimant an amount in  
5 excess of the obligation of the insolvent insurer under the policy or coverage from which the  
6 claim arises. Notwithstanding any other provision of this chapter, a covered claim shall not  
7 include ~~any a~~ claim filed with the ~~fund~~ guaranty association after the final date set by the court for  
8 the filing of claims against the liquidator or receiver of an insolvent insurer. ~~The fund shall pay~~  
9 ~~only that amount of each unearned premium, which is in excess of one hundred dollars (\$100)~~  
10 For the purpose of filing a claim under this subsection, notice of claims to the liquidator of the  
11 insolvent insurer shall be deemed notice to the association or its agent and a list of claims shall be  
12 periodically submitted to the association or association similar to the association in another state  
13 by the liquidator;

14 (iii) Any obligation of the association to defend an insured shall cease upon the  
15 association's payment or tender of an amount equal to the lesser of the association's covered  
16 claim obligation limit or the applicable policy limit.

17 (2) Be deemed the insurer to the extent of its obligation on the covered claims and to that  
18 extent, subject to the limitation provided in this chapter, shall have all ~~of the~~ rights, duties and  
19 obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not  
20 limited to, the right to pursue and retain salvage and subrogation recoverable on covered claim  
21 obligations to the extent paid by the association. The association shall not be deemed the  
22 insolvent insurer for the purpose of conferring jurisdiction;

23 (3) Allocate claims paid and expenses incurred among the three (3) accounts separately,  
24 and assess member insurers separately for each account amounts necessary to pay the obligations  
25 of the ~~fund~~ association under subdivision (a) (1) of this subsection subsequent to an insolvency,  
26 the expenses of handling covered claims subsequent to an insolvency and other expenses  
27 authorized by this chapter. The assessments of each member insurer shall be in the proportion that  
28 the net direct written premiums of the member insurer for the calendar year preceding the  
29 assessment on the kinds of insurance in the account bears to the net direct written premiums of all  
30 member insurers for the calendar year preceding the assessment on the kinds of insurance in the  
31 account. Each member insurer shall be notified of the assessment not later than thirty (30) days  
32 before it is due.

33 A ~~No~~ member insurer may not be assessed in any one year on any account an amount  
34 greater than two percent (2%) of that member insurer's net direct written premiums for the

1 calendar year preceding the assessment on the kinds of insurance in the account. If the maximum  
2 assessment, together with the other assets of the ~~fund~~ [association](#) in any account, does not provide  
3 in any one year in any account an amount sufficient to make all necessary payments from that  
4 account, each member insurer shall be assessed the additional amount that must be obtained to  
5 make all necessary payments of the underfunded account from the other two accounts, subject to  
6 the same limitation of two percent (2%) of that member insurer's net direct written premiums for  
7 the calendar year preceding the assessment on the kinds of insurance in the account. The  
8 additional assessments shall be considered loans by and between the separate accounts. Amounts  
9 borrowed under this subsection shall be paid back to the separate accounts from which they were  
10 borrowed, out of assets, including, but not limited to, existing and future assessments in the  
11 account receiving the loan. An interest charge shall be levied on all amounts borrowed under this  
12 subsection based on the average prime rate of interest for each year the money remains unpaid. If  
13 the amounts borrowed remain unpaid on the seventh yearly anniversary as a result of the inability  
14 of the borrowing account to make repayment, then the amount borrowed and interest which is not  
15 repaid, starting with the principal and interest of the first year, shall be considered uncollectible.  
16 The funds available shall be prorated and the unpaid portion shall be paid as soon after this as  
17 funds become available. ~~The fund shall pay claims in any order which it deems reasonable,~~  
18 ~~including the payment of claims as they are received from the claimants or in groups or categories~~  
19 ~~of claims.~~ The ~~fund~~ [association](#) may exempt or defer, in whole or in part, the assessment of any  
20 member insurer if the assessment would cause the member insurer's financial statement to reflect  
21 amounts of capital or surplus less than the minimum amounts required for a certificate of  
22 authority by any jurisdiction in which the member insurer is authorized to transact insurance.  
23 However, during the period of deferment, no dividends shall be paid to shareholders or  
24 policyholders. Deferred assessments shall be paid when the payment will not reduce capital or  
25 surplus below required minimums. ~~The payments~~ [Payments](#) shall be refunded to those companies  
26 receiving larger assessments by virtue of the deferment, or, at the election of any company,  
27 credited against future assessments.

28 (4) Investigate claims brought against the ~~fund~~ [association](#) and adjust, compromise,  
29 settle, and pay covered claims to the extent of the ~~fund's~~ [association's](#) obligation and deny all  
30 other claims, ~~and may review settlements, releases, and judgments to which the insolvent insurer~~  
31 ~~or its insured were parties, to determine the extent to which the settlements, releases, and~~  
32 ~~judgments may be properly contested.~~ [The association shall pay claims in any order that it may](#)  
33 [deem reasonable, including the payment of claims as they are received from the claimants or in](#)  
34 [groups or categories of claims. The association shall have the right to appoint and to direct legal](#)

1 counsel retained under liability insurance policies for the defense of covered claims;

2 (5) Notify ~~the insured~~ claimants in this state as deemed necessary by the commissioner  
3 ~~directs under section 27-34-10(b)(1)~~ and upon the commissioner's request, to the extent records  
4 are available to the association;

5 (6) (i) Have the right to review and contest as set forth in this subsection settlements,  
6 releases, compromises, waivers and judgments to which the insolvent insurer or its insureds were  
7 parties prior to the entry of the order of liquidation. In an action to enforce settlements, releases  
8 and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the  
9 order of liquidation, the association shall have the right to assert the following defenses, in  
10 addition to the defenses available to the insurer:

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

15 (I) Executed or entered into within one hundred twenty (120) days prior to the entry of an  
16 order of liquidation, and the insured or the insurer did not use reasonable care in entering into the  
17 settlement, release, compromise, waiver or judgment, or did not pursue all reasonable appeals of  
18 an adverse judgment; or

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

21 (B) If a court of competent jurisdiction finds that the association is not bound by a  
22 settlement, release, compromise, waiver or judgment for the reasons described in subparagraph  
23 (i)(A), the settlement, release, compromise, waiver or judgment shall be set aside, and the  
24 association shall be permitted to defend any covered claim on the merits. The settlement, release,  
25 compromise, waiver or judgment may not be considered as evidence of liability or damages in  
26 connection with any claim brought against the association or any other party under this chapter.

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

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

1           (7)(6) Handle claims through its employees or through one or more insurers or other  
2 persons designated as servicing facilities. Designation of a servicing facility is subject to the  
3 approval of the commissioner, but the designation may be declined by a member insurer;

4           (8)(7) Reimburse each servicing facility for obligations of the ~~fund~~ association paid by  
5 the facility and for expenses incurred by the facility while handling claims on behalf of the ~~fund~~  
6 association and shall pay the other expenses of the ~~fund~~ association authorized by this chapter;  
7 ~~and~~

8           (9)(8) (i) The association shall obtain a line of credit for the benefit of each account, in  
9 an amount not to exceed the applicable maximum to ensure the immediate availability of funds  
10 for purposes of future claims and expenses attributable to an insurer insolvency in that account.  
11 The line of credit shall be obtained from qualified financial institutions. The line of credit shall  
12 provide for a thirty (30) day notice of termination or nonrenewal to the commissioner and the  
13 association and shall provide funding to the association within three (3) business days of receipt  
14 of written notice from the commissioner of an insolvent insurer in that account. Each member  
15 insurer upon receipt of notice from the association shall make immediate payment for its  
16 proportionate share of the amount borrowed based on the premium for the preceding calendar  
17 year. The maximum line of credit or preinsolvency assessment for each account shall be subject  
18 to prior review and approval by the commissioner at the time of origination.

19           (ii) If the association cannot obtain a line of credit, the association may obtain ~~Obtain~~ an  
20 irrevocable line of credit agreement from each member insurer in an amount not to exceed the  
21 member insurer's maximum assessment pursuant to subdivision (3) of this subsection to ensure  
22 the immediate availability of funds for the purposes of future claims and expenses attributable to  
23 an insurer insolvency;

24           (iii) Any amount drawn ~~from the fund~~ under any line of credit shall be considered a  
25 payment toward the member insurer's assessment provided for in subdivision (3) of this  
26 subsection;

27           (iv) The member insurer shall provide funding to the ~~fund~~ association under the line of  
28 credit within three (3) business days of receipt of a written request from the ~~fund~~ association for a  
29 draw-down under the line of credit;

30           (v) The line of credit agreement shall be subject to prior review and approval by the  
31 commissioner at the time of origination and any subsequent renewal. It shall include any  
32 commercially reasonable provisions the ~~fund~~ association or the commissioner may deem  
33 advisable, including a provision that the line of credit is irrevocable or for a stated period of time  
34 and provides for thirty (30) day notice to the ~~fund~~ association and the commissioner that the line

1 is being terminated or not renewed;

2 ~~(v)~~(iii) If a line of credit is not given as provided for in this section, the member insurer  
3 shall be responsible for the payment of an assessment of up to the member's proportionate share  
4 of the applicable maximum as set forth in this subsection which shall be paid into a pre-  
5 insolvency assessment fund in each account.

6 (10) Submit, not later than ninety (90) days after the end of the association's fiscal year, a  
7 financial report for the preceding fiscal year in a form approved by the commissioner.

8 (b) The ~~fund~~ association may:

9 (1) Employ or retain ~~those~~ persons as are necessary to handle claims and perform other  
10 duties of the ~~fund~~ association;

11 (2) Borrow funds necessary to effect the purposes of this chapter in ~~accord~~ accordance  
12 with the plan of operation;

13 (3) Sue or be sued;

14 (4) Negotiate and become a party to any contracts necessary to carry out the purpose of  
15 this chapter;

16 (5) Perform any other acts necessary or proper to effectuate the purpose of this chapter;  
17 and

18 (6) Refund to the member insurers in proportion to the contribution of each member  
19 insurer to that account that amount by which the assets of the account exceed the liabilities, if, at  
20 the end of any calendar year, the board of directors finds that the assets of the ~~fund~~ association in  
21 any account exceed the liabilities of that account as estimated by the board of directors for the  
22 coming year.

23 (c) Suits involving the association:

24 (1) Except for actions by the receiver, all actions relating to or arising out of this chapter  
25 against the association shall be brought in the courts in this state. The courts shall have exclusive  
26 jurisdiction over all actions relating to or arising out of his chapter against the association.

27 (2) The exclusive venue in any action by or against the association is in the Providence  
28 county superior court. The association may, at its option, waive this venue as to specific actions.

29 **27-34-9. Plan of operation.** -- (a) The ~~fund~~ association shall submit to the commissioner  
30 a plan of operation and any amendments to the plan of operation necessary or suitable to assure  
31 the fair, reasonable, and equitable administration of the ~~fund~~ association. The plan of operation  
32 and ~~any~~ amendments ~~to it~~ shall become effective upon approval in writing by the commissioner.

33 (b) If the ~~fund~~ association fails to submit a suitable plan of operation or suitable  
34 amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate

1 any reasonable rules necessary or advisable to effectuate the provisions of this chapter. The rules  
2 shall continue in force until modified by the commissioner or superseded by a plan or  
3 amendments to it submitted by the ~~fund~~ [association](#) and approved by the commissioner.

4 (c) All member insurers shall comply with the plan of operation.

5 (d) The plan of operation shall:

6 (1) Establish the procedures where all of the powers and duties of the fund under section  
7 27-34-8 will be performed;

8 (2) Establish the procedures for handling the assets of the ~~fund~~ [association](#);

9 [\(3\) Require that written procedures be established for the disposition of liquidating](#)  
10 [dividends or other monies received from the estate of the insolvent insurer;](#)

11 [\(4\)\(3\) Require that written procedures be established to designate](#) ~~Establish~~ the amount  
12 and method of reimbursing members of the board of directors under section 27-34-7;

13 [\(5\)\(4\) Establish procedures by which claims may be filed with the ~~fund~~ \[association\]\(#\) and](#)  
14 [establish acceptable forms of proof of covered claims. ~~Notice of claims to the receiver or~~](#)  
15 [liquidator of the insolvent insurer shall be deemed notice to the fund or its agent, and a list of](#)  
16 [claims shall be periodically submitted to the fund or similar organization in another state by the](#)  
17 [receiver or liquidator;](#)

18 [\(6\)\(5\) Establish regular places and times for meetings of the board of directors;](#)

19 [\(7\)\(6\) ~~Establish~~ Require that written](#) procedures [be established](#) for records to be kept of  
20 all financial transactions of the ~~fund~~ [association](#), its agents; and the board of directors;

21 [\(8\)\(7\) Provide that any member insurer aggrieved by any final action or decision of the](#)  
22 [fund ~~association~~](#) may appeal to the commissioner within thirty (30) days after the action or  
23 decision;

24 [\(9\)\(8\) Establish the procedures ~~by~~ \[under\]\(#\)](#) which selections for the board of directors will  
25 be submitted to the commissioner; ~~and~~

26 [\(10\)\(9\) Contain additional provisions necessary or proper for the execution of the powers](#)  
27 [and duties of the ~~fund~~ \[association\]\(#\).](#)

28 (e) The plan of operation may provide that any or all powers and duties of the ~~fund~~  
29 [association](#), except those under sections 27-34-8(a)(3) and 27-34-8(b)(2), ~~may be~~ [are](#) delegated to  
30 a corporation, association, [similar to the association](#) or other organization which performs or will  
31 perform functions similar to those of the ~~fund~~ [association](#), or its equivalent, in two or more states.  
32 ~~That~~ [The](#) corporation, association, [similar to the association](#) or organization shall be reimbursed  
33 as a servicing facility would be reimbursed and shall be paid for its performance of any other  
34 functions of the ~~fund~~ [association](#). A delegation under this subsection shall take effect only with

1 the approval of both the board of directors and the commissioner, and may be made only to a  
2 corporation, association, or organization which extends protection not substantially less favorable  
3 and effective than that provided by this chapter.

4 **27-34-10. Duties and powers of the commissioner.** -- (a) The commissioner shall:

5 (1) Notify the ~~fund~~ association of the existence of an insolvent insurer not later than  
6 three (3) days after he or she receives notice of the determination of the insolvency. The ~~fund~~  
7 association shall be entitled to a copy of ~~any a~~ complaint seeking an order of liquidation with a  
8 finding of insolvency against a member ~~insurer~~ company at the same time that the complaint is  
9 filed with a court of competent jurisdiction; and

10 (2) ~~Upon request of the board of directors, provide~~ Provide the ~~fund~~ association with a  
11 statement of the net direct written premiums of each member insurer; ~~and~~ upon request of the  
12 board of directors.

13 ~~(3) Notify the fund of all filings made under section 27-35-2 except as prohibited under~~  
14 ~~section 27-35-6. The commissioner shall provide copies of all of these filings to the fund upon~~  
15 ~~request.~~

16 (b) The commissioner may:

17 ~~(1) Require that the fund notify the insured of the insolvent insurer and any other~~  
18 ~~interested parties of the determination of insolvency and of their rights under this chapter. The~~  
19 ~~notification shall be by mail at their last known address, where available, but if sufficient~~  
20 ~~information for notification by mail is not available, notice by publication in a newspaper of~~  
21 ~~general circulation shall be sufficient;~~

22 ~~(1)(2)~~ Suspend or revoke, after notice and hearing, the certificate of authority to transact  
23 insurance in this state of any member insurer which that fails to pay an assessment when due or  
24 fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on  
25 a member insurer that fails to pay an assessment when due. The fine shall not exceed five percent  
26 (5%) of the unpaid assessment per month, except that a fine not be less than one hundred dollars  
27 (\$100) per month; and

28 ~~(2)(3)~~ Revoke the designation of any servicing facility if he or she finds claims are being  
29 handled unsatisfactorily; ; and

30 (3) Examine, audit, or otherwise regulate the association.

31 (c) ~~Any~~ A final action or order of the commissioner under this chapter shall be subject to  
32 judicial review in a court of competent jurisdiction.

33 **27-34-11. Effect of paid claims.** -- (a) Any person recovering under this chapter shall be  
34 deemed to have assigned ~~his or her~~ any rights under the policy to the ~~fund~~ association to the

1 extent of his or her recovery from the ~~fund~~ association. Every insured or claimant seeking the  
2 protection of this chapter shall cooperate with the ~~fund~~ association to the same extent as the  
3 person would have been required to cooperate with the insolvent insurer. The ~~fund~~ association  
4 shall have no cause of action against the insured of the insolvent insurer for ~~any~~ sums it has paid  
5 out except any causes of action as the insolvent insurer would have had if the sums had been paid  
6 by the insolvent insurer and except as provided in subsection (b) of this section and section 27-  
7 34-11.5. In the case of an insolvent insurer operating on a plan with assessment liability,  
8 payments of claims of the association shall not operate to reduce the liability of the insureds to  
9 the receiver, liquidator or statutory successor for unpaid assessments.

10 (b) The ~~fund~~ association shall have the right to recover from ~~the following persons the~~  
11 ~~amount of any "covered claim" paid on behalf of the person pursuant to this chapter:~~

12 ~~(1) Any insured whose net worth on December 31 of the year next preceding the date the~~  
13 ~~insurer became an insolvent insurer exceeded fifty million dollars (\$50,000,000) and whose~~  
14 ~~liability obligations to other persons are satisfied in whole or in part by payments made under this~~  
15 ~~chapter; provided, that there is no recovery of any prejudgment interest on any pending or future~~  
16 ~~claims against this insured, including claims presently in suit or on appeal; and~~

17 ~~(2) Any a person who is an affiliate of the insolvent insurer and whose liability~~  
18 ~~obligations to other persons are satisfied in whole or in part by payments made under this chapter~~  
19 all amounts paid by the association on behalf of that person pursuant to the chapter, whether for  
20 indemnity, defense or otherwise.

21 (c) The receiver, liquidator, or statutory successor of an insolvent insurer shall be ~~bound~~  
22 by granted the utmost deference with regard to settlements of covered claims by the fund or a  
23 similar organization in another state. ~~The court having jurisdiction shall grant these claims~~  
24 ~~priority equal to that which the claimant would have been entitled in the absence of this chapter~~  
25 ~~against the assets of the insolvent insurer. The expenses of the fund or similar organization in~~  
26 ~~handling claims shall be accorded the same priority as the liquidator's expenses~~

27 (d) The association and any association similar to the association in another state shall be  
28 entitled to file a claim in the liquidation of an insolvent insurer for any amounts paid by them on  
29 covered claim obligations as determined under this chapter or similar laws in other states and  
30 shall receive dividends and other distributions at the priority set forth in section 27-14.3-46.

31 ~~(d)~~(e) The ~~fund~~ association shall periodically file with the receiver or liquidator of the  
32 insolvent insurer statements of the covered claims paid by the ~~fund~~ association and estimates of  
33 anticipated claims on the ~~fund that~~ association which shall preserve the rights of the ~~fund~~  
34 association against the assets of the insolvent insurer.

1           **27-34-12. Nonduplication of recovery Exhaustion of other coverage.** -- (a)(1) Any  
2 person having a claim against an insurer ~~under any provision in an insurance policy other than a~~  
3 ~~policy of an insolvent insurer which is also a covered claim~~, shall be required first to exhaust ~~first~~  
4 ~~his or her right under that~~ all coverage provided by any other policy, including the right to a  
5 defense under the other policy, if the claim under the other policy arises from the same facts,  
6 injury or loss that gave rise to the covered claim against the association. The requirement to  
7 exhaust shall apply without regard to whether the other insurance policy is a policy written by a  
8 member insurer. However, no person shall be required to exhaust any right under the policy of an  
9 insolvent insurer or any right under a life insurance policy.

10           (2) Any amount payable on a covered claim under this chapter shall be reduced by the  
11 full applicable limits stated in the other insurance policy, or by the amount of any the recovery  
12 under the other insurance policy as provided herein. The association shall receive a full credit for  
13 the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to  
14 exhaust all coverage and limits applicable under the other insurance policy. If the claimant  
15 demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits  
16 applicable under the other insurance policy, or if there are no applicable stated limits under the  
17 policy, the association shall receive a full credit for the total recovery.

- 18           (i) The credit shall be deducted from the lesser of:  
19           (A) The association's covered claim limit;  
20           (B) The amount of the judgment or settlement of the claim; or  
21           (C) The policy limits of the policy of the insolvent insurer.  
22           (ii) In no case, however, shall the obligation of the association exceed the covered claim  
23 limit embodied in section 27-34-8.

24           ~~(b) Any person having a claim or legal right of recovery under any governmental~~  
25 ~~insurance or guaranty program which is also a covered claim, shall be required to exhaust first his~~  
26 ~~or her right under that program. Any amount payable on a covered claim under this chapter shall~~  
27 ~~be reduced by the amount of any recovery under the program.~~

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

32           (4) A claim under a policy providing liability coverage to a person who may be jointly  
33 and severally liable as a joint tortfeasor with the person covered under the policy of the insolvent  
34 insurer that gives rise to the covered claim shall be considered to be a claim arising from the same

1 facts, injury or loss that gave rise to the covered claim against the association.

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

4 (i) A claim against a health maintenance organization, a hospital plan corporation, a  
5 nonprofit hospital, medical or dental service corporation or disability insurance policy; and

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

7 (6) The person insured by the insolvent insurer's policy may not be pursued by a third-  
8 party claimant for any amount paid to the third-party by which the association's obligation is  
9 reduced by the application of this section.

10 (b)(e) Any person having a claim which may be recovered from more than one ~~insurers'~~  
11 ~~insolvency fund~~ insurance guaranty association or its equivalent shall seek recovery first from the  
12 ~~fund~~ association or its equivalent of the place of residence of the insured, except that if it is a first  
13 party claim for damage to property with a permanent location ~~he or she~~ the person shall seek  
14 recovery first from the ~~fund or its equivalent in the state~~ association of the location of the  
15 property. ~~and, if~~ If it is a workers' compensation claim, ~~he or she~~ the person shall seek recovery  
16 first from the ~~fund or its equivalent of the state~~ association of the residence of the claimant. Any  
17 recovery under this chapter shall be reduced by the amount of recovery from ~~any other~~ another  
18 insurance ~~insolvency fund~~ guaranty association or its equivalent.

19 **27-34-14. Tax exemption.** -- The ~~fund~~ association shall be exempt from the payment of  
20 all fees and all taxes levied by this state or any of its subdivisions; except taxes levied on real or  
21 personal property.

22 **27-34-15. ~~Recognition of assessments in rates~~ Recoupment of assessments.** -- The  
23 rates and premiums charged for insurance policies to which this ~~chapter~~ section applies shall  
24 include amounts sufficient to recoup a sum equal to the amounts paid to the ~~fund~~ association by  
25 the member insurer less any amounts returned to the member insurer by the ~~fund~~ association. ;  
26 ~~and those rates~~ Rates shall not be deemed excessive because they contain an amount reasonably  
27 calculated to recoup assessments paid by the member insurer.

28 **27-34-16. Immunity.** -- There shall be no liability on the part of, and no cause of action  
29 of any nature shall arise against, any member insurer, the ~~fund~~ association, or its agents or  
30 employees, the board of directors, or any persons serving as an alternate or substitute  
31 representative of any director, or the commissioner or his or her ~~representative~~ representatives for  
32 any action taken or ~~not taken~~ any failure to act by them in the performance of their powers and  
33 duties under this chapter.

34 **27-34-17. Stay of proceedings.** -- All proceedings in which the insolvent insurer is a

1 party or is obligated to defend a party in any court in this state shall, subject to waiver by the  
2 association in specific cases involving covered claims, be stayed for six (6) months and ~~any such~~  
3 additional time ~~that as~~ may be determined by the court from the date the insolvency is determined  
4 or an ancillary proceeding is instituted in this state, whichever is later, to permit proper defense  
5 by the ~~fund~~ association of all pending causes of action. ~~As to any covered claims arising from a~~  
6 ~~judgment under any decision, verdict, or finding, based on the default of the insolvent insurer or~~  
7 ~~its failure to defend an insured, the fund either on its own behalf or on behalf of the insured may~~  
8 ~~apply to have the judgment, order, decision, verdict, or finding set aside by the same court or~~  
9 ~~administrator that made the judgment, order, decision, verdict, or finding, and shall be permitted~~  
10 ~~to defend against the claim on the merits.~~ The liquidator, receiver, or statutory successor of an  
11 insolvent insurer covered by this chapter shall permit access by the board or its authorized  
12 representative to ~~any such~~ any such of the insolvent insurer's records that are necessary for the board in  
13 carrying out its functions under this chapter with regard to covered claims. In addition, the  
14 liquidator, receiver, or statutory successor shall provide the board or its representative with copies  
15 of the records upon the request by the board and at the expense of the board.

16 **27-34-19. Prohibition against advertising of membership in fund** **Prohibition against**  
17 **advertising of membership in association.** -- No person shall make, publish, or circulate, or  
18 cause to be made, published, or circulated, any statement that uses the existence of the ~~fund~~  
19 association for the purposes of sale, solicitation, or inducement to purchase any form of insurance  
20 within the scope of this chapter.

21 SECTION 2. Sections 27-34-13 and 27-34-18 of the General Laws in Chapter 27-34  
22 entitled "Rhode Island Insurers' Insolvency Fund" are hereby repealed.

23 ~~**27-34-13. Examination of the fund.** -- The fund shall be subject to examination and~~  
24 ~~regulation by the commissioner. The board of directors shall submit to the commissioner, not~~  
25 ~~later than March 30 of each year, a financial report for the preceding calendar year in a form~~  
26 ~~approved by the commissioner.~~

27 ~~**27-34-18. Termination and distribution of fund.** -- (a) The commissioner shall by order~~  
28 ~~terminate the operation of the fund as to any kind of insurance within the scope of this chapter~~  
29 ~~with respect to which he or she has found, after hearing, that there is in effect a statutory or~~  
30 ~~voluntary plan which:~~

31 ~~(1) Is a permanent plan which is adequately funded or for which adequate funding is~~  
32 ~~provided; and~~

33 ~~(2) Extends or will extend to Rhode Island policyholders and residents protection and~~  
34 ~~benefits with respect to insolvent insurers not substantially less favorable and effective to the~~

1 ~~policyholders and residents than the protection and benefits provided with respect to the kind of~~  
2 ~~insurance under this chapter.~~

3 ~~(b) The commissioner shall by the same order authorize the discontinuance of future~~  
4 ~~payments by insurers to the fund with respect to the same kinds of insurance; provided, that~~  
5 ~~assessments and payments shall continue, as necessary, to liquidate covered claims, and related~~  
6 ~~expenses, not covered by the other plan.~~

7 ~~(c) In the event the operation of any account of the fund shall be terminated as to all~~  
8 ~~kinds of insurance within its scope, the fund as soon as possible after this shall distribute the~~  
9 ~~balance of monies and assets remaining in the account, after discharge of the functions of the~~  
10 ~~fund with respect to prior insurer insolvencies not covered by the other plan, together with related~~  
11 ~~expenses, to the insurers which are then writing in this state policies of the kinds of insurance in~~  
12 ~~the account, pro rata upon the basis of the aggregate of the payments made by the respective~~  
13 ~~insurers to the account during the period of five (5) years next preceding the date of the order.~~  
14 ~~Upon completion of the distribution with respect to all of the accounts specified in section 27-34-~~  
15 ~~6, this chapter shall be deemed to have expired.~~

16 SECTION 3. Chapter 27-34 of the General Laws entitled "Rhode Island Insurers'  
17 Insolvency Fund" is hereby amended by adding thereto the following sections:

18 **27-34-10.5. Coordination among guaranty associations.** – (a) The association may join  
19 one or more organizations of other state associations of similar purposes, to further the purposes  
20 and administer the powers and duties of the association. The association may designate one or  
21 more of these organizations to act as a liaison for the association and, to the extent the association  
22 authorizes, to bind the association in agreements or settlements with receivers of insolvent  
23 insurance companies or their designated representatives.

24 (b) The association, in cooperation with other obligated or potentially obligated guaranty  
25 associations, or their designated representatives, shall make all reasonable efforts to coordinate  
26 and cooperate with receivers, or their designated representatives, in the most efficient and  
27 uniform manner, including the use of uniform data standards as promulgated or approved by the  
28 national association of insurance commissioners.

29 **27-34-11.5. Net worth exclusion.** – (a) For purposes of this section “high net worth  
30 insured” shall mean any insured, excluding state and local governments, whose net worth exceeds  
31 fifty million dollars (\$50,000,000) on December 31 of the year prior to the year in which the  
32 insurer becomes an insolvent insurer; provided that an insured’s net worth on that date shall be  
33 deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates  
34 as calculated on a consolidated basis.

1           **(b)(1) The association shall not be obligated to pay any first-party claims by a high net**  
2 **worth insured.**

3           **(2) The association shall have the right to recover from the high net worth insured all**  
4 **amounts paid by the association to or on behalf of such insured, whether for indemnity, defense**  
5 **or otherwise.**

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

11           **(d) The association shall establish reasonable procedures subject to the approval of the**  
12 **commissioner for requesting financial information from insureds on a confidential basis for**  
13 **purposes of applying this section, provided that the financial information may be shared with any**  
14 **other association similar to the association and the liquidator for the insolvent insurer on the same**  
15 **confidential basis. Any request to an insured seeking financial information must advise the**  
16 **insured of the consequences of failing to provide the financial information. If an insured refuses**  
17 **to provide the requested financial information where it is requested and available, the association**  
18 **may, until such time as the information is provided, provisionally deem the insured to be a high**  
19 **net worth insured for the purpose of denying a claim under subsection (b) of this section.**

20           **(e) In any lawsuit contesting the applicability of this section where the insured has**  
21 **refused to provide financial information under the procedure established pursuant to subsection**  
22 **(d) of this section, the insured shall bear the burden of proof concerning its net worth at the**  
23 **relevant time. If the insured fails to prove that its net worth at the relevant time was less than the**  
24 **applicable amount, the court shall award the association its full costs, expenses and reasonable**  
25 **attorney's fees in contesting the claim.**

26           **27-34-12.5. Prevention of insolvencies. – To aid in the detection and prevention of**  
27 **insurer insolvencies:**

28           **(1) The board of directors may, upon a majority vote, make recommendations to the**  
29 **commissioner on matters generally related to improving or enhancing regulation for solvency.**

30           **(2) At the conclusion of any domestic insurer insolvency in which the association was**  
31 **obligated to pay covered claims, the board of directors may, upon a majority vote, prepare a**  
32 **report on the history and causes of the insolvency, based on the information available to the**  
33 **association and submit the report to the commissioner.**

34           **(3) Reports and recommendations provided under this section shall not be considered**

1 [public documents.](#)

2 SECTION 4. This act shall take effect upon passage.

=====  
LC01794/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE

\*\*\*

- 1           This act would rename the Rhode Island Insurers Insolvency Fund the Rhode Island
- 2 Property & Casualty Insurance Guaranty Association and would amend the chapter to bring it
- 3 into compliance with the current NAIC model act upon which the statute is based.
- 4           This act would take effect upon passage.

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LC01794/SUB A  
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