

17:30A-2 et al

LEGISLATIVE HISTORY CHECKLIST

HJSJ 17:30A-2 et al. (Property - Liability Insurance Guaranty Association Act--amendment)

LAWS OF 1979 CHAPTER 448

Bill No. A1114

Sponsor(s) Stewart and Herman

Date Introduced April 20, 1978

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes \* Amendments during passage denoted by asterisks

Date of Passage: Assembly June 21, 1979

Senate Jan. 5, 1980

Date of approval Feb. 22, 1980

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate No

Fiscal Note No

Veto message No

Message on signing No

Following were printed.

Reports No

Hearings No

2/1/78 EJ

[OFFICIAL COPY REPRINT]  
ASSEMBLY, No. 1114

STATE OF NEW JERSEY

INTRODUCED APRIL 20, 1978

By Assemblymen STEWART and HERMAN

Referred to Committee on Banking and Insurance

AN ACT to amend and supplement "New Jersey Property-Liability Insurance Guaranty Association Act," approved April 11, 1974 (P. L. 1974, c. 17).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 2 of P. L. 1974, c. 17 (C. 17:30A-2) is amended to  
2 read as follows:

3 2. a. The purpose of this act is to provide a mechanism for the  
4 payment of covered claims under certain insurance policies, to  
5 avoid excessive delay in payment, to avoid financial loss to  
6 claimants or policyholders because of the insolvency of an insurer,  
7 to assist in the detection and prevention of insurer insolvencies,  
8 and to provide an association to assess the cost of such protection  
9 among insurers.

10 b. This act shall apply to all kinds of direct insurance, except life  
11 insurance, accident and health insurance, workmen's compensation  
12 insurance, title insurance, annuities, surety bonds, *credit insurance,*  
13 *mortgage guaranty insurance, municipal bond coverage, fidelity*  
14 *insurance, mutual fund guarantees, ocean marine insurance,* and  
15 insurance provided by the Motor Vehicle Liability Security Fund,  
16 established pursuant to P. L. 1952, c. 175 (C. 39:6-92 et seq.),  
17 until funds comprising said fund are declared exhausted by the  
18 commissioner.

1 2. Section 5 of P. L. 1974, c. 17 (C. 17:30A-5) is amended to  
2 read as follows:

3 5. As used in this act:

4 a. **["Account"** means any one of the two accounts created by  
5 section 6;**"]** (*Deleted by amendment.*)

6 b. "Association" means the New Jersey Property-Liability In-  
7 surance Guaranty Association created under section 6;

**EXPLANATION—**Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

8 c. "Commissioner" means the Commissioner of Insurance of  
9 this State;

10 d. "Covered claim" means an unpaid claim, including one of  
11 unearned premiums, which arises out of and is within the coverage,  
12 and not in excess of the applicable limits of an insurance policy to  
13 which this act applies, issued by an insurer, if such insurer becomes  
14 an insolvent insurer after January 1, 1974, and (1) the claimant  
15 or insured is a resident of this State at the time of the insured  
16 event; or (2) the property from which the claim arises is perma-  
17 nently located in this State. ~~["Covered"]~~ ~~["Except with respect to~~  
18 ~~any special joint underwriting association within the meaning of~~  
19 ~~the Joint Underwriting Association Act (P. L. 1974, c. 106)~~  
20 ~~"covered"]~~ \**"Covered" claim* shall not include any amount due  
21 any reinsurer, insurer, insurance pool, or underwriting association,  
22 ~~["except for any Special Joint Underwriting Association within the~~  
23 ~~meaning of the Joint Underwriting Association Act, P. L. . . . .,~~  
24 ~~c. . . . ]~~ as subrogation recoveries or otherwise; *provided, that a*  
25 *claim for any such amount, asserted against a person insured under*  
26 *a policy issued by an insurer which has become an insolvent insurer,*  
27 *which, if it were not a claim by or for the benefit of a reinsurer, in-*  
28 *surer, insurance pool, or underwriting association, would be a*  
29 *"covered claim," may be filed directly with the receiver of the in-*  
30 *solvent insurer, but in no event may any such claim be asserted in*  
31 *any legal action against the insured of such insolvent insurer.*

32 *A "covered claim" shall not include amounts for interest on*  
33 *unliquidated claims, punitive damages \*unless covered by the*  
34 *policy\*, counsel fees for prosecuting suits for claims against the*  
35 *association, and assessments or charges for failure of such \*in-*  
35A *solvent\* insurer \*to have\* expeditiously \*["to settle"]\* \*settled\**  
35B *claims;*

36 c. "Insolvent insurer" means (1) ~~["an"]~~ *a licensed insurer*  
37 *admitted pursuant to R. S. 17:32-1 et seq. or authorized pursuant*  
38 *to R. S. 17:17-1 et seq., or P. L. 1945, C. 161 (C. 17:50-1 et seq.) to*  
39 *transact the business of insurance in this State either at the time*  
40 *the policy was issued or when the insured event occurred, and (2)*  
41 ~~["who"]~~ *which is determined to be insolvent by the court of competent*  
42 *jurisdiction;*

43 f. "Member insurer" means any person who (1) writes any kind  
44 of insurance to which this act applies under section 2 b. including  
45 the exchange of reciprocal or interinsurance contracts and (2) is  
46 *a licensed insurer* admitted or authorized to transact the business  
47 of insurance in this State;

48 g. "Net direct written premiums" means direct gross premiums  
 49 written in this State on insurance policies to which this act applies,  
 50 less return premiums thereon and dividends paid or credited to  
 51 policyholders on such direct business. "Net direct written pre-  
 52 miums" does not include premiums on contracts between insurers  
 53 or reinsurers, and does not include premiums on policies issued by  
 54 an insurer as a member of the New Jersey Insurance Underwriting  
 55 Association pursuant to P. L. 1968, c. 129 (C. 17:37A-1 et seq.).

1 3. Section 6 of P. L. 1974, c. 17 (C. 17:30A-6) is amended to  
 2 read as follows:

3 6. There is created a private nonprofit unincorporated legal  
 4 entity to be known as the New Jersey Property-Liability Insurance  
 5 Guaranty Association. All insurers defined as member insurers  
 6 in section 5 f. shall be and remain members of the association as  
 7 a condition of their authority to transact insurance in this State.  
 8 The association shall perform its functions under a plan of opera-  
 9 tion established and approved under section 9 and shall exercise  
 10 its powers through a board of directors established under section 7.  
 11 **[For purposes of administration and assessment, the association**  
 12 **shall be divided into two separate accounts: (1) the ocean or wet**  
 13 **marine insurance and inland marine or transportation account;**  
 14 **and (2) the account for all other insurance to which the act applies.]**

1 4. Section 8 of P. L. 1974, c. 17 (C. 17:30A-8) is amended to  
 2 read as follows:

3 8. a. The association shall:

4 (1) Be obligated to the extent of the covered claims against an  
 5 insolvent insurer incurred \*, *in the case of private passenger auto-*  
 6 *mobile insurance,\** **[prior to or 30 days]** \* after the determina-  
 7 tion of insolvency, or before the policy expiration date \*, *or in the*  
 8 *case of insurance other than automobile insurance, covered claims*  
 9 *against such insolvent insurer incurred prior to or 90 days after*  
 10 *the determination of insolvency, or before the policy expiration*  
 11 *date\** if less than **[30]** \* *90\** days after said determination, or  
 12 before the insured replaces the policy or causes its cancellation, if  
 13 he does so within **[30]** \* *90\** days of the determination, but such  
 14 obligation shall include only that amount of each covered claim  
 15 **[which is in excess of \$50.00]** \* *and is less than \$300,000.00* and  
 16 **[shall be]** subject to any applicable deductible contained in the  
 17 policy, *except that the \$300,000.00 limitation shall not apply to a*  
 17A *covered claim arising out of insurance coverage mandated by*  
 17B *section 4 of\* P. L. 1972, c. 70 \*(C. 39:6A-4). In the case of bene-*  
 17C *fits payable under section 4 of P. L. 1972, c. 70, the association shall*

17D be liable for payment of benefits in an amount not to exceed  
 17E \$75,000.00. Benefits payable in excess of such amount shall be re-  
 17F coverable by the association from the Unsatisfied Claim and Judge-  
 17G ment Fund pursuant to the provisions of P. L. 1977, c. 310\*. In no  
 17H event shall the association be obligated to a policyholder or claim-  
 17I ant in an amount in excess of the obligation of the insolvent in-  
 17J surer under the policy from which the claim arises;

18 (2) Be deemed the insurer to the extent of its obligation on the  
 19 covered claims and to such extent shall have all rights, duties, and  
 20 obligations of the insolvent insurer as if the insurer had not become  
 21 insolvent.

22 (3) [Allocate covered claims to be paid and expenses incurred  
 23 among the two accounts separately, and assess] Assess member  
 24 insurers [separately for each account] in amounts necessary to  
 25 pay:

26 (a) The obligation of the association under paragraph a. (1)  
 27 of this section;

28 (b) The expenses of handling covered claims;

29 (c) The cost of examinations under section 13; and

30 (d) Other expenses authorized by this act.

31 The assessments of each member insurer shall be in the propor-  
 32 tion that the net direct written premiums of the member insurer  
 33 for the [preceding] calendar year *preceding the assessment* [on  
 34 the kinds of insurance in the account] bears to the net direct  
 35 written premiums of all member insurers for the [preceding]  
 36 calendar year *preceding the assessment* [on the kinds of insurance  
 37 in the account]. Each member insurer shall be notified of the  
 38 assessment not later than 30 days before it is due. No member  
 39 insurer may be assessed in any year [on any account] an amount  
 40 greater than 2% of that member's insurer's net direct written  
 41 premiums for the [preceding] calendar year *preceding the assess-*  
 42 *ment* [on the kinds of insurance in the account].

43 The association may, subject to the approval of the commissioner,  
 44 exempt, abate or defer, in whole or in part the assessment of any  
 45 member insurer, if the assessment would cause the member in-  
 46 surer's financial statement to reflect amounts of capital or surplus  
 47 less than the minimum amounts required for a certificate of au-  
 48 thority by any jurisdiction in which the member insurer is autho-  
 49 rized to transact insurance. In the event an assessment against  
 50 a member insurer is exempted, abated, or deferred, in whole or in  
 51 part, because of the limitations set forth in this section, the amount  
 52 by which such assessment is exempted, abated, or deferred, shall

53 be assessed against the other member insurers in a manner con-  
54 sistent with the basis for assessments set forth in this section.  
55 If the maximum assessment, together with the other assets of the  
56 association [in any account], does not provide in any 1 year an  
57 amount sufficient to carry out the responsibilities of the association,  
58 the necessary additional funds shall be assessed as soon thereafter  
59 as it is permitted by this act. Each member insurer *servicing as a*  
60 *servicing facility* may set off against any assessment, authorized  
61 payments made on covered claims and expenses incurred in the  
62 payment of such claims by [the] *such* member insurer [if they  
63 are chargeable to the account for which the assessment is made;

64 (4) Investigate claims brought against the association and ad-  
65 just, compromise, settle, and pay covered claims to the extent of the  
66 association's obligation and deny all other claims and may review  
67 settlements, releases and judgments to which the insolvent insurer  
68 or its insureds were parties to determine the extent to which such  
69 settlements, releases and judgments may be properly contested;

70 (5) Notify such persons as the commissioner directs under sec-  
71 tion 10 b. (1);

72 (6) Handle claims through its employees or through one or more  
73 insurers or other persons designated as servicing facilities. Desig-  
74 nation of a servicing facility is subject to the approval of the com-  
75 missioner, but such designation may be declined by a member  
76 insurer;

77 (7) Reimburse each servicing facility for obligations of the  
78 association paid by the facility and for expenses incurred by the  
79 facility while handling claims on behalf of the association and shall  
80 pay the other expenses of the association authorized by this act.

81 b. The association may:

82 (1) Employ or retain such persons as are necessary to handle  
83 claims and perform other duties of the association;

84 (2) Borrow funds necessary to effect the purposes of this act  
85 in accord with the plan of operation;

86 (3) Sue or be sued;

87 (4) Negotiate and become a party to such contracts as are  
88 necessary to carry out the purpose of this act;

89 (5) Perform such other acts as are necessary or proper to  
90 effectuate the purpose of this act;

91 (6) Refund to the member insurers in proportion of the con-  
92 tribution of each member insurer [to that account] that amount by  
93 which the assets [of the account] exceed the liabilities if, at the end  
94 of any calendar year, the board of directors finds that the assets

95 of the association [in any account] exceed the liabilities [of that  
96 account] as estimated by the board of directors for the coming  
97 year.

1 5. Section 10 of P. L. 1974, c. 17 (C. 17:30A-10) is amended to  
2 read as follows:

3 10. a. The commissioner shall:

4 (1) Notify the association of the existence of an insolvent in-  
5 surer not later than 3 days after he receives notice of the determi-  
6 nation of the insolvency. *The association shall be entitled to a copy*  
7 *of any complaint seeking an order of liquidation with a finding of*  
8 *insolvency against a member insurer at the same time that such*  
9 *complaint is filed with a court of competent jurisdiction;*

10 (2) Upon request of the board of directors, provide the associa-  
11 tion with a statement of the net direct written premiums of each  
12 member insurer.

13 b. The commissioner may:

14 (1) Require that the association notify the insureds of the in-  
15 solvent insurer and any other interested parties of the determina-  
16 tion of insolvency and of their rights under this act. Such  
17 notification may be by mail at their last known address, where  
18 available, but if sufficient information for notification by mail is  
19 not available, notice by publication in a newspaper of general  
20 circulation shall be sufficient;

21 (2) Suspend or revoke, after notice and hearing, the certificate  
22 or authority to transact insurance in this State of any member  
23 insurer which fails to pay an assessment when due or fails to  
24 comply with the plan of operation. As an alternative, the com-  
25 missioner may levy a fine on any member insurer which fails to  
26 pay an assessment when due. Such fine shall not exceed 5% of  
27 the unpaid assessment per month, except that no fine shall be less  
28 than \$100.00 per month;

29 (3) Revoke the designation of any servicing facility if he finds  
30 claims are being handled unsatisfactorily.

1 6. Section 11 of P. L. 1974, c. 17 (C. 17:30A-11) is amended to  
2 read as follows:

3 11. a. Any person recovering under this act shall be deemed to  
4 have assigned his rights under the policy to the association to the  
5 extent of his recovery from the association. Every insured or  
6 claimant seeking the protection of this act shall cooperate with the  
7 association to the same extent as such person would have been  
8 required to cooperate with the insolvent insurer. The association  
9 shall have no cause of action against the insured of the insolvent

10 insurer for any sums it has paid out except such causes of action  
11 as the insolvent insurer would have had if such sums had been paid  
12 by the insolvent insurer. In the case of an insolvent insurer  
13 operating on a plan with an assessment liability, payments of claims  
14 of the association shall not operate to reduce the liability of in-  
15 sureds to the receiver, liquidator, or statutory successor for unpaid  
16 assessments.

17 b. The receiver, liquidator, or statutory successor of an insolvent  
18 insurer shall be bound by settlements of covered claims by the  
19 association or its representatives. The court having jurisdiction  
20 shall grant such claims priority equal to that which the claimant  
21 would have been entitled in the absence of this act against the  
22 assets of the insolvent insurer. The expenses of the association or  
23 similar organization in handling claims shall be accorded the same  
24 priority as the liquidator's expenses:

25 c. The association shall periodically file with the receiver or  
26 liquidator of the insolvent insurer statements of the covered claims  
27 paid by the association and estimates of anticipated claims on the  
28 association which shall preserve the rights of the association  
29 against the assets of the insolvent insurer.

30 d. *The liquidator, receiver, or statutory successor of an insolvent*  
31 *insurer covered by this act shall permit access by the boards or*  
32 *its representative to all of the insolvent insurer's records which*  
33 *would assist the board in carrying out its functions under this act*  
34 *with regard to covered claims. In addition, the liquidator, receiver,*  
35 *or statutory successor shall provide the board or its representative*  
36 *with copies or permit it to make copies of such records upon the*  
37 *request of the board and at the expense of the board.*

1 7. Section 16 of P. L. 1974, c. 17 (C. 17:30A-16) is amended to  
2 read as follows:

3 16. [The rates and premiums charged for insurance policies to  
4 which this act applies may include amounts sufficient] a. *The com-*  
5 *missioner shall adopt rules permitting member insurers to recoup*  
6 *over a reasonable length of time [which shall not be less than 3*  
7 *years], a sum [equal to the amounts paid to the association by the*  
8 *member insurer less any amounts returned to the member insurer*  
9 *by the association and such rates shall not be deemed excessive*  
10 *because they contain an amount] reasonably calculated to recoup*  
11 *assessments paid by the member insurer under this act by way*  
12 *of a surcharge on premiums charged for insurance policies to which*  
13 *this act applies; b. the amount of any surcharge shall be determined*  
14 *by the commissioner; c. the commissioner may permit an insurer*



15 *to omit collection of the surcharge from its insureds when the ex-*  
16 *penditure of collecting the surcharge would exceed the amount of the*  
17 *surcharge, provided that nothing in this section shall relieve the*  
18 *insurer of its obligation to remit the amount of surcharge other-*  
19 *wise collectible.*

1 8. Section 18 of P. L. 1974, c. 17 (C. 17:30A-18) is amended to  
2 read as follows:

3 18. Upon application and notice all proceedings in which the  
4 insolvent insurer is a party or is obligated to defend a party in  
5 any court in this State shall be stayed for **[60 days]** **\*[6 months]\***  
6 **\*120 days\*** and such additional time thereafter as may be deter-  
7 mined by the court from the date the insolvency is determined or  
8 any ancillary proceeding is initiated in the State, whichever is later,  
9 to permit proper defense by the association of all pending causes  
10 of action. **[Any]** With respect to any covered claims arising from  
11 a judgment under any decision, verdict or finding based on the de-  
12 fault of the insolvent insurer or its failure to defend an insured, the  
13 association either on its own behalf or on behalf of such insured  
14 may apply to have such judgment, order, decision, verdict or find-  
15 ing set aside by the court in which such judgment, order, decision,  
16 verdict or finding is entered and shall be permitted to defend  
17 against such claim on the merits.

1 9. (New section) No person, including an insurer, agent, or  
2 affiliate of an insurer shall make, publish, disseminate, circulate,  
3 or place before the public, or cause, directly or indirectly, to be  
4 made, published, disseminated, circulated or placed before the  
5 public, in any newspaper, magazine or other publication, or in the  
6 form of a notice, circular, pamphlet, letter or poster, or over any  
7 radio station or television station, or in any other way, any ad-  
8 vertisement, announcement or statement which uses the existence  
9 of the New Jersey Property-Liability Insurance Guaranty Associa-  
10 tion for the purpose of sales, solicitation, or inducement to pur-  
11 chase any form of insurance covered by the New Jersey Property-  
12 Liability Insurance Guaranty Association Act; provided, however,  
13 this section shall not apply to the New Jersey Property-Liability  
14 Insurance Guaranty Association or to any other entity which does  
15 not sell or solicit insurance.

1 10. This act shall take effect immediately.

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ASSEMBLY, No. 1114

STATE OF NEW JERSEY

INTRODUCED APRIL 20, 1978

By Assemblymen STEWART and HERMAN

Referred to Committee on Banking and Insurance

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9 among insurers.

10 b. This act shall apply to all kinds of direct insurance, except life  
11 insurance, accident and health insurance, workmen's compensation  
12 insurance, title insurance, annuities, surety bonds, *credit insurance,*  
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18 *any special joint underwriting association within the meaning of*  
19 *the Joint Underwriting Association Act (P. L. 1974, c. 106)*  
20 *"covered claim" shall not include any amount due any reinsurer,*  
21 *insurer, insurance pool, or underwriting association, [except for*  
22 *any Special Joint Underwriting Association within the meaning*  
23 *of the Joint Underwriting Association Act, P. L. . . . , c. . . . ]*  
24 *as subrogation recoveries or otherwise; provided, that a claim for*  
25 *any such amount, asserted against a person insured under a policy*  
26 *issued by an insurer which has become an insolvent insurer, which,*  
27 *if it were not a claim by or for the benefit of a reinsurer, insurer,*  
28 *insurance pool, or underwriting association, would be a "covered*  
29 *claim," may be filed directly with the receiver of the insolvent*  
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10 amount of each covered claim which is in excess of \$50.00 and is  
11 less than \$300,000.00 and [shall be] subject to any applicable de-  
12 ductible contained in the policy, *except that the \$300,000.00 limita-*  
13 *tion shall not apply to a covered claim arising out of insurance*  
14 *coverage mandated by P. L. 1972, c. 70.* In no event shall the associ-  
15 ation be obligated to a policyholder or claimant in an amount in  
16 excess of the obligation of the insolvent insurer under the policy  
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39 insurer may be assessed in any year **[on any account]** an amount  
40 greater than 2% of that member's insurer's net direct written  
41 premiums for the **[preceding]** calendar year *preceding the assess-*  
42 *ment* **[on the kinds of insurance in the account]**.**

43 The association may, subject to the approval of the commissioner,  
44 exempt, abate or defer, in whole or in part the assessment of any  
45 member insurer, if the assessment would cause the member in-  
46 surer's financial statement to reflect amounts of capital or surplus  
47 less than the minimum amounts required for a certificate of au-  
48 thority by any jurisdiction in which the member insurer is autho-  
49 rized to transact insurance. In the event an assessment against  
50 a member insurer is exempted, abated, or deferred, in whole or in  
51 part, because of the limitations set forth in this section, the amount  
52 by which such assessment is exempted, abated, or deferred, shall  
53 be assessed against the other member insurers in a manner con-  
54 sistent with the basis for assessments set forth in this section.  
55 If the maximum assessment, together with the other assets of the  
56 association **[in any account]**, does not provide in any 1 year an  
57 amount sufficient to carry out the responsibilities of the association,  
58 the necessary additional funds shall be assessed as soon thereafter  
59 as it is permitted by this act. Each member insurer *servicing as a*  
60 *servicing facility* may set off against any assessment, authorized  
61 payments made on covered claims and expenses incurred in the  
62 payment of such claims by **[the]** *such* member insurer **[if they**  
63 *are chargeable to the account for which the assessment is made;*

64 (4) Investigate claims brought against the association and ad-  
65 just, compromise, settle, and pay covered claims to the extent of the  
66 association's obligation and deny all other claims and may review

67 settlements, releases and judgments to which the insolvent insurer  
68 or its insureds were parties to determine the extent to which such  
69 settlements, releases and judgments may be properly contested;

70 (5) Notify such persons as the commissioner directs under sec-  
71 tion 10 b. (1);

72 (6) Handle claims through its employees or through one or more  
73 insurers or other persons designated as servicing facilities. Desig-  
74 nation of a servicing facility is subject to the approval of the com-  
75 missioner, but such designation may be declined by a member  
76 insurer;

77 (7) Reimburse each servicing facility for obligations of the  
78 association paid by the facility and for expenses incurred by the  
79 facility while handling claims on behalf of the association and shall  
80 pay the other expenses of the association authorized by this act.

81 b. The association may:

82 (1) Employ or retain such persons as are necessary to handle  
83 claims and perform other duties of the association;

84 (2) Borrow funds necessary to effect the purposes of this act  
85 in accord with the plan of operation;

86 (3) Sue or be sued;

87 (4) Negotiate and become a party to such contracts as are  
88 necessary to carry out the purpose of this act;

89 (5) Perform such other acts as are necessary or proper to  
90 effectuate the purpose of this act;

91 (6) Refund to the member insurers in proportion of the con-  
92 tribution of each member insurer **to that account** that amount by  
93 which the assets **of the account** exceed the liabilities if, at the end  
94 of any calendar year, the board of directors finds that the assets  
95 of the association **in any account** exceed the liabilities **of that**  
96 **account** as estimated by the board of directors for the coming  
97 year.

1 5. Section 10 of P. L. 1974, c. 17 (C. 17:30A-10) is amended to  
2 read as follows:

3 10. a. The commissioner shall:

4 (1) Notify the association of the existence of an insolvent in-  
5 surer not later than 3 days after he receives notice of the determi-  
6 nation of the insolvency. *The association shall be entitled to a copy*  
7 *of any complaint seeking an order of liquidation with a finding of*  
8 *insolvency against a member insurer at the same time that such*  
9 *complaint is filed with a court of competent jurisdiction;*

10 (2) Upon request of the board of directors, provide the associa-  
11 tion with a statement of the net direct written premiums of each  
12 member insurer.

13 b. The commissioner may:

14 (1) Require that the association notify the insureds of the in-  
15 solvent insurer and any other interested parties of the determina-  
16 tion of insolvency and of their rights under this act. Such  
17 notification may be by mail at their last known address, where  
18 available, but if sufficient information for notification by mail is  
19 not available, notice by publication in a newspaper of general  
20 circulation shall be sufficient;

21 (2) Suspend or revoke, after notice and hearing, the certificate  
22 or authority to transact insurance in this State of any member  
23 insurer which fails to pay an assessment when due or fails to  
24 comply with the plan of operation. As an alternative, the com-  
25 missioner may levy a fine on any member insurer which fails to  
26 pay an assessment when due. Such fine shall not exceed 5% of  
27 the unpaid assessment per month, except that no fine shall be less  
28 than \$100.00 per month;

29 (3) Revoke the designation of any servicing facility if he finds  
30 claims are being handled unsatisfactorily.

1 6. Section 11 of P. L. 1974, c. 17 (C. 17:30A-11) is amended to  
2 read as follows:

3 11. a. Any person recovering under this act shall be deemed to  
4 have assigned his rights under the policy to the association to the  
5 extent of his recovery from the association. Every insured or  
6 claimant seeking the protection of this act shall cooperate with the  
7 association to the same extent as such person would have been  
8 required to cooperate with the insolvent insurer. The association  
9 shall have no cause of action against the insured of the insolvent  
10 insurer for any sums it has paid out except such causes of action  
11 as the insolvent insurer would have had if such sums had been paid  
12 by the insolvent insurer. In the case of an insolvent insurer  
13 operating on a plan with an assessment liability, payments of claims  
14 of the association shall not operate to reduce the liability of in-  
15 sureds to the receiver, liquidator, or statutory successor for unpaid  
16 assessments.

17 b. The receiver, liquidator, or statutory successor of an insolvent  
18 insurer shall be bound by settlements of covered claims by the  
19 association or its representatives. The court having jurisdiction  
20 shall grant such claims priority equal to that which the claimant  
21 would have been entitled in the absence of this act against the  
22 assets of the insolvent insurer. The expenses of the association or  
23 similar organization in handling claims shall be accorded the same  
24 priority as the liquidator's expenses:

25 c. The association shall periodically file with the receiver or  
26 liquidator of the insolvent insurer statements of the covered claims  
27 paid by the association and estimates of anticipated claims on the  
28 association which shall preserve the rights of the association  
29 against the assets of the insolvent insurer.

30 d. *The liquidator, receiver, or statutory successor of an insolvent*  
31 *insurer covered by this act shall permit access by the boards or*  
32 *its representative to all of the insolvent insurer's records which*  
33 *would assist the board in carrying out its functions under this act*  
34 *with regard to covered claims. In addition, the liquidator, receiver,*  
35 *or statutory successor shall provide the board or its representative*  
36 *with copies or permit it to make copies of such records upon the*  
37 *request of the board and at the expense of the board.*

1 7. Section 16 of P. L. 1974, c. 17 (C. 17:30A-16) is amended to  
2 read as follows:

3 16. **[The rates and premiums charged for insurance policies to**  
4 **which this act applies may include amounts sufficient]** a. *The com-*  
5 *missioner shall adopt rules permitting member insurers to recoup*  
6 *over a reasonable length of time [which shall not be less than 3*  
7 *years], a sum [equal to the amounts paid to the association by the*  
8 *member insurer less any amounts returned to the member insurer*  
9 *by the association and such rates shall not be deemed excessive*  
10 *because they contain an amount]* reasonably calculated to recoup  
11 assessments paid by the member insurer *under this act by way*  
12 *of a surcharge on premiums charged for insurance policies to which*  
13 *this act applies; b. the amount of any surcharge shall be determined*  
14 *by the commissioner; c. the commissioner may permit an insurer*  
15 *to omit collection of the surcharge from its insureds when the ex-*  
16 *penditure of collecting the surcharge would exceed the amount of the*  
17 *surcharge, provided that nothing in this section shall relieve the*  
18 *insurer of its obligation to remit the amount of surcharge other-*  
19 *wise collectible.*

1 8. Section 18 of P. L. 1974, c. 17 (C. 17:30A-18) is amended to  
2 read as follows:

3 18. Upon application and notice all proceedings in which the  
4 insolvent insurer is a party or is obligated to defend a party in  
5 any court in this State shall be stayed for **[60 days]** *6 months and*  
6 *such additional time thereafter as may be determined by the court*  
7 *from the date the insolvency is determined or any ancillary pro-*  
8 *ceeding is initiated in the State, whichever is later, to permit*  
9 *proper defense by the association of all pending causes of action.*  
10 **[Any]** *With respect to any covered claims arising from a judg-*



11 ment under any decision, verdict or finding based on the default  
12 of the insolvent insurer or its failure to defend an insured, the  
13 association either on its own behalf or on behalf of such insured  
14 may apply to have such judgment, order, decision, verdict or find-  
15 ing set aside by the court in which such judgment, order, decision,  
16 verdict or finding is entered and shall be permitted to defend  
17 against such claim on the merits.

1 9. (New section) No person, including an insurer, agent, or  
2 affiliate of an insurer shall make, publish, disseminate, circulate,  
3 or place before the public, or cause, directly or indirectly, to be  
4 made, published, disseminated, circulated or placed before the  
5 public, in any newspaper, magazine or other publication, or in the  
6 form of a notice, circular, pamphlet, letter or poster, or over any  
7 radio station or television station, or in any other way, any ad-  
8 vertisement, announcement or statement which uses the existence  
9 of the New Jersey Property-Liability Insurance Guaranty Associa-  
10 tion for the purpose of sales, solicitation, or inducement to pur-  
11 chase any form of insurance covered by the New Jersey Property-  
12 Liability Insurance Guaranty Association Act; provided, however,  
13 this section shall not apply to the New Jersey Property-Liability  
14 Insurance Guaranty Association or to any other entity which does  
15 not sell or solicit insurance.

1 10. This act shall take effect immediately.

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#### STATEMENT

This legislation makes technical amendments to the "New Jersey Product Liability Insurance Guaranty Association Act." It provides that the liquidator, receiver, or statutory successor of an insolvent insurer covered by the act would be required to permit access by the guaranty association board of directors to an insolvent insurer's records. The bill also provides that a surcharge levied pursuant to the act be determined by the commissioner, who would also be given the authority to permit an insurer to omit the levying of the surcharge when the expense of collecting it would exceed the amount to be levied.

The bill further provides that no person would be permitted to advertise the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance which is covered by the association.

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ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1114

STATE OF NEW JERSEY

DATED: MAY 21, 1979

This legislation amends the law which establishes the New Jersey Property-Liability Guaranty Association, which was established to deal with administering the affairs of insolvent insurers. The amendments exclude from the purview of the act several lines of insurance, including credit insurance, mortgage guaranty insurance, mutual fund guarantee insurance, and ocean marine insurance. With the elimination of ocean marine insurance, the separate account established for that line and inland marine insurance is eliminated. The amendments provide that even though amounts due reinsurers, insurance pools, or underwriting associations are not covered claims, such claims may be filed directly with the receiver of the insolvent insurer. Specifically excluded from the definition of "covered claims" are claims for interest on unliquidated claims, punitive damages, counsel fees for prosecuting suits for claims against the association, and assessments or charges for the failure of the insurer to settle claims expeditiously. Non-licensed insurers would be excluded from the definition of member insurers. The amendments further establish a "cap" of \$300,000.00 per claim on all claims except those claims which are medical claims which are part of the unlimited medical benefits section of personal injury protection coverage under no-fault.

This legislation also gives the Commissioner of Insurance the authority to promulgate rules for the surcharging of policies under the law; the commissioner currently has such rules but without having specific statutory authority to promulgate them. The commissioner would be permitted to determine the amount of the surcharge and could permit insurers from omitting to surcharge their policyholders if the cost of surcharging exceeds the money to be recouped. In addition, the bill changes the time in which an action against the insurer may be stayed, to give the association 6 months instead of 60 days to prepare for impending actions. A new section of law is added which prohibits the use of the Guaranty Association in advertising to promote the sale of insurance.

The Assembly Banking and Insurance Committee has amended the legislation to provide that all automobile claims be honored by the association until the expiration of the policy, and all other claims for 90, rather than 30, days. The amendments eliminate the present association deductible of \$50.00, and provides that in the case of personal injury protection claims under no-fault, the association would be liable only for claims of \$75,000.00 or less; the balance would be collectible from the Unsatisfied Claim and Judgment Fund pursuant to the provisions of P. L. 1977, c. 310, which provides for a pooling arrangement for all insurers for claims in excess of that amount.

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ASSEMBLY COMMITTEE AMENDMENTS TO  
**ASSEMBLY, No. 1114**

**STATE OF NEW JERSEY**

ADOPTED MAY 21, 1979

Amend page 2, section 2, line 17, omit "Except with respect to".

Amend page 2, section 2, lines 18 and 19, omit in entirety.

Amend page 2, section 2, line 20, omit "covered"; insert "Covered".

Amend page 2, section 2, line 33, after "damages", insert "unless covered by the policy".

Amend page 2, section 2, line 35, after "such", insert "insolvent"; after "insurer", insert "to have"; omit "to settle", insert "settled".

Amend page 3, section 4, line 5, after "incurred", insert ", in the case of private passenger automobile insurance,"; omit "prior to or 30 days".

Amend page 3, section 4, line 6, after "date", insert ", or in the case of insurance other than automobile insurance, covered claims against such insolvent insurer incurred prior to or 90 days after the determination of insolvency, or before the policy expiration date".

Amend page 3, section 4, line 7, omit "30", insert "90".

Amend page 3, section 4, line 8, omit "30", insert "90".

Amend page 3, section 4, line 10, omit "which is in excess of \$50.00".

Amend page 3, section 4, line 14, after "by", insert "section 4 of"; after "70", insert "(C. 39:6A-4). In the case of benefits payable under section 4 of P. L. 1972, c. 70, the association shall be liable for payment of benefits in an amount not to exceed \$75,000.00. Benefits payable in excess of such amount shall be recoverable by the association from the Unsatisfied Claim and Judgment Fund pursuant to the provisions of P. L. 1977, c. 310".

Amend page 7, section 8, line 5, omit "6 months", insert "120 days".

FEBRUARY 25, 1980

48

A statement from the Governor on the signing of A3659 is attached.

S-439, sponsored by Senator Frank J. Dodd (D-Essex), which validates deeds made by fiduciaries that have been recorded for at least five years, despite failure to recite the actual consideration as required by NJSA 46:15-6, enacted in 1968.

Prior to that time, stating consideration in a deed was a peculiar requirement for fiduciary deeds. Since it was unusual, a recitation of consideration was occasionally inadvertently omitted from the deed.

This bill validates those deeds provided they were recorded more than five years ago. This clears up the minor flaw on title which those deeds present.

S-486, sponsored by Senator Joseph A. Maressa (D-Gloucester), which amends the law regarding motor vehicle vision re-examinations.

This bill only applies to the random selection by the Division of Motor Vehicles of individuals who are asked to take re-examination for their vision. Prior to signing of this bill, only optometrists and ophthalmologists could certify such exams. This bill permits licensed doctors of medicine and osteopathy to certify such exams.

S-250, sponsored by Senator Anthony Scardino, Jr. (D-Bergen). S-1335, sponsored by Senator Brian T. Kennedy (R-Monmouth), and S-3157, sponsored by Senator Frank X. Graves, Jr. (D-Passaic), which are companion bills providing for the issuance of special license plates to disabled veterans, active members of the New Jersey Air or Army National Guard, and members of first aid or rescue squads.

A-1114, sponsored by Assemblyman Donald H. Stewart (D-Gloucester), which contains a series of amendments to the law governing the New Jersey Property-Liability/Guaranty Association.

The Association administers the affairs of insolvent insurers. The Association, among other things, establishes a fund for the compensation of certain insureds of insolvent carriers.