

R.S. 17:30A-1

LEGISLATIVE FACT SHEET

ON "Property - Liability Insurance  
Guaranty Assn. Act"

N.J.R.S. 17:30A-1 et seq.  
(

Amendment)

(Copies made  
with reference to  
17:30A-1)

LAWS OF 1974

CHAPTER 17 April 11, 1974

SENATE 1004

ASSEMBLY

INTRODUCED March 25

BY Feldman, Bateman, McCahn

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING None discovered

VETO no

STATEMENT

This bill would establish a non-profit unincorporated legal entity to be known as the New Jersey Property-Liability Insurance Guaranty Association. The purpose of the association is to avoid financial loss to claimants or policyholders because of the insolvency of insurance companies.

The bill would apply to all direct insurance such as malpractice and property liability insurers. It would not apply to life, health, accident, workmen's compensation, and title insurance, insurance annuities, surety bonds and insurance provided by the Motor Vehicle Liability Security Fund. All insurers providing direct coverage of the above types of insurance would be assessed to establish a fund which would be used to promptly pay claims in the event of the insolvency of an insurance company.

The bill empowers the Commissioner of Insurance to examine insurers, who are members of the association, to detect and take the necessary action to prevent insolvencies by member insurers.

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7-22-68 L3/RSL

3-21-81 - Yes, ok, t.

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Background:

974.905  
I62

N. J. Assn. of Independent Insurance Agents.  
Newsletter, vol. 12, no. 2, April 10, 1974.

Approved 51004.

Checked card catalog

N. J. -- Insurance, Property

SENATE, No. 1004

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1974

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT to provide a New Jersey Property-Liability Insurance Guaranty Association and supplementing Title 17 of the Revised Statutes.

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

1 1. This act shall be known and may be cited as the "New Jersey  
2 Property-Liability Insurance Guaranty Association Act."

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

8 b. This act shall apply to all kinds of direct insurance, except life  
9 insurance, accident and health insurance, workmen's compensation  
10 insurance, title insurance, annuities, surety bonds and insurance  
11 provided by the Motor Vehicle Liability Security Fund, established  
12 pursuant to P. L. 1952, c. 175 (C. 39:6-92 et seq.), until funds com-  
13 prising said fund are declared exhausted by the commissioner.

1 3. If any provision of this act or the application thereof to any  
2 person or circumstance is held invalid, the invalidity shall not  
3 affect other provisions or applications of this act which can be  
4 given effect without the invalid provision or application, and for  
5 this purpose the provisions of this act are declared to be separable.

1 4. a. This act shall be liberally construed to effect the purpose  
2 under section 2 which shall constitute an aid and guide to inter-  
3 pretation.

4 b. All laws and parts of laws of this State inconsistent with this

5 act are hereby deemed superseded to the extent of such incon-  
6 sistency.

1 5. As used in this act:

2 a. "Account" means any one of the two accounts created by  
3 section 6;

4 b. "Association" means the New Jersey Property-Liability  
5 Insurance Guaranty Association created under section 6;

6 c. "Commissioner" means the Commissioner of Insurance of  
7 this State;

8 d. "Covered claim" means an unpaid claim, including one of  
9 unearned premiums, which arises out of and is within the coverage,  
10 and not in excess of the applicable limits of an insurance policy to  
11 which this act applies, issued by an insurer, if such insurer becomes  
12 an insolvent insurer after January 1, 1974, and (1) the claimant  
13 or insured is a resident of this State at the time of the insured  
14 event; or (2) the property from which the claim arises is perma-  
15 nently located in this State. "Covered claim" shall not include  
16 any amount due any reinsurer, insurer, insurance pool, or under-  
17 writing association, as subrogation recoveries or otherwise;

18 e. "Insolvent insurer" means (1) an insurer admitted or autho-  
19 rized to transact the business of insurance in this State either at  
20 the time the policy was issued or when the insured event occurred,  
21 and (2) who is determined to be insolvent by a court of competent  
22 jurisdiction;

23 f. "Member insurer" means any person who (1) writes any kind  
24 of insurance to which this act applies under section 2 b. including  
25 the exchange of reciprocal or interinsurance contracts and (2) is  
26 admitted or authorized to transact the business of insurance in  
27 this State;

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

1 6. There is created a private nonprofit unincorporated legal  
2 entity to be known as the New Jersey Property-Liability Insurance  
3 Guaranty Association. All insurers defined as member insurers  
4 in section 5 f. shall be and remain members of the association as  
5 a condition of their authority to transact insurance in this State.

6 The association shall perform its functions under a plan of opera-  
7 tion established and approved under section 9 and shall exercise  
8 its powers through a board of directors established under section 7.  
9 For purposes of administration and assessment, the association  
10 shall be divided into two separate accounts: (1) the ocean or wet  
11 marine insurance and inland marine or transportation account;  
12 and (2) the account for all other insurance to which the act applies.

1 7. a. The board of directors of the association shall consist of  
2 not less than five nor more than nine members serving terms as  
3 established in the plan of operation hereinafter described. One  
4 member of the board shall be appointed by the commissioner  
5 from and among the officers of the various mutual insurance  
6 companies, and one member of the board shall be appointed by  
7 the commissioner from among the officers of the various stock in-  
8 surance companies. The remaining members of the board shall be  
9 selected by member insurers subject to the approval of the com-  
10 missioner. Vacancies on the board shall be filled for the remaining  
11 period of the term in the manner described in the plan of operation.  
12 To select the initial board of directors, and initially organize the  
13 association, the commissioner shall give notice to all member in-  
14 surers of the time and place of the organizational meeting. In  
15 determining voting rights at the organizational meeting, each mem-  
16 ber insurer shall be entitled to one vote in person or by proxy. If  
17 the board of directors is not selected within 60 days after notice  
18 of the organizational meeting, the commissioner may appoint all  
19 the initial members;

20 b. In approving selections or in appointing members to the board,  
21 the commissioner shall consider, among other things, whether all  
22 member insurers are fairly represented;

23 c. Members of the board may be reimbursed from the assets of  
24 the association for expenses incurred by them as members of the  
25 board of directors.

1 8. a. The association shall:

2 (1) Be obligated to the extent of the covered claims against an  
3 insolvent insurer incurred prior to or 30 days after the determina-  
4 tion of insolvency, or before the policy expiration date if less than  
5 30 days after said determination, or before the insured replaces  
6 the policy or causes its cancellation, if he does so within 30 days  
7 of the determination, but such obligation shall include only that  
8 amount of each covered claim which is in excess of \$50.00, and  
9 shall be subject to any applicable deductible contained in the policy.  
10 In no event shall the association be obligated to a policyholder or

11 claimant in an amount in excess of the obligation of the insolvent  
12 insurer under the policy from which the claim arises;

13 (2) Be deemed the insurer to the extent of its obligation on the  
14 covered claims and to such extent shall have all rights, duties, and  
15 obligations of the insolvent insurer as if the insurer had not become  
16 insolvent.

17 (3) Allocate covered claims to be paid and expenses incurred  
18 among the two accounts separately, and assess member insurers  
19 separately for each account in amounts necessary to pay:

20 (a) The obligation of the association under paragraph a. (1)  
21 of this section;

22 (b) The expenses of handling covered claims;

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

24 (d) Other expenses authorized by this act.

25 The assessments of each member insurer shall be in the propor-  
26 tion that the net direct written premiums of the member insurer  
27 for the preceding calendar year on the kinds of insurance in the  
28 account bears to the net direct written premiums of all member  
29 insurers for the preceding calendar year on the kinds of insurance  
30 in the account. Each member insurer shall be notified of the assess-  
31 ment not later than 30 days before it is due. No member insurer  
32 may be assessed in any year on any account in an amount greater  
33 than 2% of that member insurer's net direct written premiums for  
34 the preceding calendar year on the kinds of insurance in the  
35 account.

36 The association may, subject to the approval of the commissioner,  
37 exempt, abate or defer, in whole or in part the assessment of any  
38 member insurer, if the assessment would cause the member in-  
39 surer's financial statement to reflect amounts of capital or surplus  
40 less than the minimum amounts required for a certificate of au-  
41 thority by any jurisdiction in which the member insurer is autho-  
42 rized to transact insurance. In the event an assessment against  
43 a member insurer is exempted, abated, or deferred, in whole or in  
44 part, because of the limitations set forth in this section, the amount  
45 by which such assessment is exempted, abated, or deferred, shall  
46 be assessed against the other member insurers in a manner con-  
47 sistent with the basis for assessments set forth in this section.  
48 If the maximum assessment, together with the other assets of the  
49 association in any account, does not provide in any 1 year an  
50 amount sufficient to carry out the responsibilities of the association,  
51 the necessary additional funds shall be assessed as soon thereafter  
52 as it is permitted by this act. Each member insurer may set off

53 against any assessment, authorized payments made on covered  
54 claims and expenses incurred in the payment of such claims by  
55 the member insurer if they are chargeable to the account for which  
56 the assessment is made;

57 (4) Investigate claims brought against the association and adjust,  
58 compromise, settle, and pay covered claims to the extent of the  
59 association's obligation and deny all other claims and may review  
60 settlements, releases and judgments to which the insolvent insurer  
61 or its insureds were parties to determine the extent to which such  
62 settlements, releases and judgments may be properly contested;

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

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

70 (7) Reimburse each servicing facility for obligations of the  
71 association paid by the facility and for expenses incurred by the  
72 facility while handling claims on behalf of the association and shall  
73 pay the other expenses of the association authorized by this act.

74 b. The association may:

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

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

79 (3) Sue or be sued;

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

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

84 (6) Refund to the member insurers in proportion of the con-  
85 tribution of each member insurer to that account that amount by  
86 which the assets of the account exceed the liabilities if, at the end  
87 of any calendar year, the board of directors finds that the assets  
88 of the association in any account exceed the liabilities of that  
89 account as estimated by the board of directors for the coming year.

1 9. a. (1) The association shall submit to the commissioner a  
2 plan of operation and any amendments thereto necessary or suit-  
3 able to assure the fair, reasonable, and equitable administration of  
4 the association. The plan of operation and any amendments

5 thereto shall become effective upon approval in writing by the  
6 commissioner;

7 (2) If the association fails to submit a plan of operation ac-  
8 ceptable to the commissioner within 90 days following the effective  
9 date of this act, or if at any time thereafter the association fails to  
10 submit an acceptable amendment to the plan, the commissioner  
11 shall, after notice and hearing adopt and promulgate such reason-  
12 able rules as are necessary or advisable to effectuate the provisions  
13 of this act. Such rules shall continue in force until modified by the  
14 commissioner or superseded by a plan submitted by the association  
15 and approved by the commissioner.

16 b. All member insurers shall comply with the plan of operation.

17 c. The plan of operation shall:

18 (1) Establish the procedures whereby all the powers and duties  
19 of the association under section 8 of this act will be performed;

20 (2) Establish procedures for handling assets of the association;

21 (3) Establish the amount and method of reimbursing members  
22 of the board of directors under section 7 of this act;

23 (4) Establish procedures by which claims may be filed with the  
24 association and establish acceptable forms of proof of covered  
25 claims. Notice of claims to the receiver or liquidator of the in-  
26 solvent insurer shall be deemed notice to the association or its  
27 agent and a list of such claims shall be periodically submitted to  
28 the association by the receiver or liquidator;

29 (5) Establish regular places and times for meetings of the  
30 board of directors;

31 (6) Establish procedures for records to be kept in all financial  
32 transactions of the association, its agents, and the board of  
33 directors;

34 (7) Provide that any member insurer aggrieved by any final  
35 action or decision of the association may appeal to the commissioner  
36 within 30 days after the action or decision;

37 (8) Establish the procedures whereby selections for the board  
38 of directors will be submitted to the commissioner;

39 (9) Contain additional provisions necessary or proper for the  
40 execution of the powers and duties of the association.

41 d. The plan of operation may provide that any or all powers  
42 and duties of the association except those under sections 8 a. (3)  
43 and 8 b. (2), are delegated to a corporation, association, or other  
44 organization which performs or will perform functions similar to  
45 those of this association, or its equivalent. Such a corporation,  
46 association or organization shall be reimbursed as a servicing



47 facility would be reimbursed and shall be paid for its performance  
48 of the functions of the association. A delegation under this sub-  
49 section shall take effect only with the approval of both the board  
50 of directors and the commissioner, and may be made only to a  
51 corporation, association, or organization which extends protection  
52 not substantially less favorable and effective than that provided  
53 by this act.

1 10. a. The commissioner shall:

2 (1) Notify the association of the existence of an insolvent insurer  
3 not later than 3 days after he receives notice of the determination  
4 of the insolvency;

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

8 b. The commissioner may:

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

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

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

1 11. a. Any person recovering under this act shall be deemed to  
2 have assigned his rights under the policy to the association to the  
3 extent of his recovery from the association. Every insured or  
4 claimant seeking the protection of this act shall cooperate with the  
5 association to the same extent as such person would have been  
6 required to cooperate with the insolvent insurer. The association  
7 shall have no cause of action against the insured of the insolvent  
8 insurer for any sums it has paid out except such causes of action  
9 as the insolvent insurer would have had if such sums had been paid  
10 by the insolvent insurer. In the case of an insolvent insurer

11 operating on a plan with assessment liability, payments of claims  
12 of the association shall not operate to reduce the liability of in-  
13 sureds to the receiver, liquidator, or statutory successor for unpaid  
14 assessments;

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

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

1 12. Any person having a covered claim which may be recovered  
2 from more than one insurance guaranty association or its equiva-  
3 lent shall seek recovery first from the association of the place of  
4 residence of the insured at the time of the insured event except that  
5 if it is a first party claim for damage to property with a permanent  
6 location, he shall seek recovery first from the association of the  
7 location of the property. Any recovery under this act shall be  
8 reduced by the amount of recovery from any other insurance guar-  
9 anty association or its equivalent. However, if recovery is denied  
10 or deferred by the association, a person may proceed to recover  
11 from any other insurance guaranty association or its equivalent  
12 from which recovery may be legally sought.

1 13. a. The commissioner shall examine any member insurer who  
2 the commissioner has reasonable cause to believe may be insolvent  
3 or in a financial condition hazardous to the policyholders or to the  
4 public. It shall be the duty of the board of directors, upon majority  
5 vote, to notify the commissioner of any information indicating any  
6 member insurer may be insolvent or in financial condition haz-  
7 ardous to the policyholders or the public;

8 b. The board of directors may, upon majority vote, request that  
9 the commissioner order an examination of any member insurer  
10 which the board in good faith believes may be in a financial con-  
11 dition hazardous to the policyholders or to the public. The com-  
12 missioner shall begin such examination within a reasonable time  
13 after receipt of such request. Any examination may be conducted

14 as a National Association of Insurance Commissioners examina-  
15 tion or may be conducted by such persons as the commissioner  
16 designates. The cost of any examination shall be paid by the asso-  
17 ciation and the examination report shall be treated as are other  
18 examination reports. In no event shall such examination report  
19 be released to the board of directors prior to its becoming a public  
20 record, but this shall not preclude the commissioner from complying  
21 with subsection c. of this section. The commissioner shall notify  
22 the board of directors when the examination is completed. The  
23 request for an examination shall be kept on file by the commis-  
24 sioner but it shall not be open to public inspection prior to the  
25 release of the examination report to the public;

26 c. It shall be the duty of the commissioner to report to the board  
27 of directors when he has reasonable cause to believe that any  
28 member insurer examined or being examined at the request of the  
29 board of directors may be insolvent or in a financial condition  
30 hazardous to the policyholders or to the public;

31 d. The board of directors may, upon majority vote, make reports  
32 and recommendations to the commissioner upon any matter ger-  
33 mane to the solvency, liquidation, rehabilitation or conservation  
34 of any member insurer. Such reports and recommendations shall  
35 not be considered public documents;

36 e. The board of directors may, upon majority vote, make recom-  
37 mendations to the commissioner for the detection and prevention  
38 of insurer insolvencies;

39 f. The board of directors shall, at the conclusion of any insurer  
40 insolvency proceedings in which the association was obligated to  
41 pay covered claims, prepare a report on the history and causes of  
42 such insolvency, based on the information available to the associa-  
43 tion, and submit such report to the commissioner.

1 14. The association shall be subject to examination and regu-  
2 lation by the commissioner. The board of directors shall submit,  
3 not later than March 31 of each year, a financial report for the  
4 preceding calendar year in a form approved by the commissioner.

1 15. The association shall be exempt from payment of all fees  
2 and all taxes levied by this State or any of its subdivisions except  
3 taxes levied on real or personal property.

1 16. The rates and premiums charged for insurance policies to  
2 which this act applies may include amounts sufficient to recoup  
3 over a reasonable length of time which shall not be less than 3  
4 years, a sum equal to the amounts paid to the association by the  
5 member insurer less any amounts returned to the member insurer

6 by the association and such rates shall not be deemed excessive  
7 because they contain an amount reasonably calculated to recoup  
8 assessments paid by the member insurer.

1 17. There shall be no liability on the part of and no cause of  
2 action of any nature shall arise against any member insurer, the  
3 association or its agents or employees, the board of directors, or  
4 the commissioner or his representatives for any action taken by  
5 them in the performance of their powers and duties under this act.

1 18. Upon application and notice all proceedings in which the  
2 insolvent insurer is a party or is obligated to defend a party in  
3 any court in this State shall be stayed for 60 days from the date  
4 the insolvency is determined to permit proper defense by the  
5 association of all pending causes of action. Any covered claims  
6 arising from a judgment under any decision, verdict or finding  
7 based on the default of the insolvent insurer or its failure to defend  
8 an insured, the association either on its own behalf or on behalf  
9 of such insured may apply to have such judgment, order, decision,  
10 verdict or finding set aside by the court in which such judgment,  
11 order, decision, verdict or finding is entered and shall be permitted  
12 to defend against such claim on the merits.

1 19. a. The commissioner shall by order terminate the operation  
2 of the association as to any kind of insurance covered by this act  
3 with respect to which he has found, after hearing, that there is in  
4 effect a statutory or voluntary plan which:

5 (1) Is a permanent plan which is adequately funded or for  
6 which adequate funding is provided; and

7 (2) Extends, or will extend to the New Jersey policyholders and  
8 residents protection and benefits with respect to insolvent insurers  
9 not substantially less favorable and effective to such policyholders  
10 and residents than the protection and benefits provided with respect  
11 to such kinds of insurance under this act.

12 b. The commissioner shall by the same such order authorize dis-  
13 continuance of future payments by insurers to the New Jersey  
14 Property-Liability Insurance Guaranty Association with respect  
15 to the same kinds of insurance; provided, the assessments and pay-  
16 ments shall continue, as necessary, to liquidate covered claims of  
17 insurers adjudged insolvent prior to said order and the related  
18 expenses not covered by such other plan;

19 c. In the event the operation of the New Jersey Property-  
20 Liability Insurance Guaranty Association shall be so terminated as  
21 to all kinds of insurance otherwise within its scope, the association  
22 as soon as possible thereafter shall distribute the balance of moneys

23 and assets remaining (after discharge of the functions of the asso-  
24 ciation with respect to prior insurer insolvencies not covered by  
25 such other plan, together with related expenses) to the insurers  
26 which are then writing in this State policies of the kinds of insur-  
27 ance covered by this act and which had made payments to the asso-  
28 ciation, pro rata upon the basis of the aggregate of such payments  
29 made by the respective insurers during the period of 5 years next  
30 preceding the date of such order. Upon completion of such dis-  
31 tribution with respect to all of the kinds of insurance covered by  
32 this act, this act shall be deemed to have expired.

1 20. This act shall take effect immediately.

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#### STATEMENT

This bill would establish a non-profit unincorporated legal entity to be known as the New Jersey Property-Liability Insurance Guaranty Association. The purpose of the association is to avoid financial loss to claimants or policyholders because of the insolvency of insurance companies.

The bill would apply to all direct insurance such as malpractice and property liability insurers. It would not apply to life, health, accident, workmen's compensation, and title insurance, insurance annuities, surety bonds and insurance provided by the Motor Vehicle Liability Security Fund. All insurers providing direct coverage of the above types of insurance would be assessed to establish a fund which would be used to promptly pay claims in the event of the insolvency of an insurance company.

The bill empowers the Commissioner of Insurance to examine insurers, who are members of the association, to detect and take the necessary action to prevent insolvencies by member insurers.