

17B:32A-2 to 17B:32A-13; 17B:32A-15 to 17B:32A-19

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2022 **CHAPTER:** 98

NJSA: 17B:32A-2 to 17B:32A-13; 17B:32A-15 to 17B:32A-19
(Updates "New Jersey Life and Health Insurance Guaranty Association Act" to current standards of National Association of Insurance Commissioners.)

BILL NO: S2422 (Substituted for A3899 (1R))

SPONSOR(S) Nellie Pou and others

DATE INTRODUCED: 5/9/2022

COMMITTEE: **ASSEMBLY:** ---
SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: 6/29/2022

SENATE: 6/29/2022

DATE OF APPROVAL: 8/12/2022

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted) Yes

S2422

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

A3899 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

end

P.L. 2022, CHAPTER 98, *approved August 12, 2022*
Senate, No. 2422 (*First Reprint*)

1 AN ACT concerning the “New Jersey Life and Health Insurance
2 Guaranty Association Act” and amending P.L.1991, c.208.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1991, c.208 (C.17B:32A-2) is amended to
8 read as follows:

9 2. a. The purpose of **[this act]** P.L.1991, c.208 (C.17B:32A-1
10 et seq.) is to protect, subject to certain limitations, those persons
11 specified in subsection a. of section 3 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-1 et seq.) from hardship because of the impairment or
13 insolvency of any member insurer that issued the life **[and]**, health
14 **[insurance policies]**, and annuity policies, plans or contracts
15 specified in subsection b. of section 3 of **[this act]** P.L.1991, c.208
16 (C.17B:32A-1 et seq.).

17 b. To provide this protection, an association of member
18 insurers is created to pay benefits and to continue coverages, as
19 limited by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), and
20 members of the association are subject to assessment to provide
21 funds to carry out the purposes of **[this act]** P.L.1991, c.208
22 (C.17B:32A-1 et seq.).
23 (cf: P.L.1991, c.208, s.2)

24
25 2. Section 3 of P.L.1991, c.208 (C.17B:32A-3) is amended to
26 read as follows:

27 3. a. **[This act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall
28 provide coverage, for the policies and contracts specified in subsection
29 b. of this section, to:

30 (1) persons who, regardless of where they reside (except for
31 nonresident certificate holders under group policies or contracts), are
32 the beneficiaries, assignees or payees, including health care providers
33 rendering services covered under health insurance policies or
34 certificates, of the persons covered under paragraph (2) of this
35 subsection; and

36 (2) persons who are owners of or certificate holders or enrollees
37 under those policies or contracts**[, or in the case of]** (other than
38 unallocated annuity contracts, [to the persons who are the contract
39 holders and] and structured settlement annuities) and in each case
40 who:

41 (a) are residents, or

42 (b) are not residents, but only if:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 29, 2022.

- 1 (i) the member insurers which issued the policies or contracts are
2 domiciled in this State;
- 3 (ii) those member insurers, health service corporations, hospital
4 service corporations, medical service corporations, or health
5 maintenance organizations never held a license or certificate of
6 authority in the states in which those persons reside;
- 7 (iii) those states have associations and coverage provisions with
8 respect to residency similar to the association created by **[this act]**
9 P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 10 (iv) those persons are not eligible for coverage by those
11 associations.
- 12 (3) For unallocated annuity contracts specified in subsection b. of
13 this section, paragraphs (1) and (2) of this subsection shall not apply,
14 and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in
15 paragraphs (5) and (6) of this subsection) provide coverage to persons
16 who are the owners of the unallocated annuity contracts:
- 17 (a) if the contracts are issued to or in connection with a specific
18 benefit plan whose plan sponsor has its principal place of business in
19 this State; and
- 20 (b) issued to or in connection with government lotteries if the
21 owners are residents.
- 22 (4) For structured settlement annuities specified in subsection b. of
23 this section, paragraphs (1) and (2) of this subsection shall not apply,
24 and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in
25 paragraphs (5) and (6) of this subsection) provide coverage to a person
26 who is a payee under a structured settlement annuity (or beneficiary of
27 a payee if the payee is deceased) if the payee:
- 28 (a) is a resident, regardless of where the contract owner resides; or
29 (b) is not a resident, but only under both of the following
30 conditions:
- 31 (i) the contract owner of the structured settlement annuity is a
32 resident or is not a resident but the insurer that issued the settlement
33 annuity is domiciled in New Jersey and the state in which the contract
34 owner resides has an association similar to the association created by
35 P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 36 (ii) the payee (or beneficiary) and the contract owner are not
37 eligible for coverage by the association of the state in which the payee
38 or contract owner resides.
- 39 (5) P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
40 coverage to a person:
- 41 (a) who is a payee (or beneficiary) of a contract owner resident of
42 this State, if the payee (or beneficiary) is afforded any coverage by the
43 association of another state;
- 44 (b) covered under paragraph (3) of this subsection, if any coverage
45 is provided by the association of another state to the person; or
- 46 (c) who acquires rights to receive payments through a structured
47 settlement factoring transaction as defined in section 5891 of the
48 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless

1 of whether the transaction occurred before or after that section became
2 effective.

3 (6) P.L.1991, c.208 (C.17B:32A-1 et seq.) is intended to provide
4 coverage to a person who is a resident of this State and, in special
5 circumstances, to a nonresident. In order to avoid duplicate coverage,
6 if a person who would otherwise receive coverage under P.L.1991,
7 c.208 (C.17B:32A-1 et seq.) is provided coverage under the law of
8 another state, the person shall not be provided coverage under
9 P.L.1991, c.208 (C.17B:32A-1 et seq.). In determining the application
10 of the provisions of this paragraph in situations where a person could
11 be covered by the association of more than one state, whether as an
12 owner, payee, enrollee, beneficiary or assignee, P.L.1991, c.208
13 (C.17B:32A-1 et seq.) shall be construed in conjunction with other
14 state laws to result in coverage by only one association.

15 b. **【This act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall provide
16 coverage to the persons specified in subsection a. of this section for
17 policies or contracts of:

18 (1) direct, non-group life insurance, health insurance (which for
19 the purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.) includes health
20 service corporation contracts, hospital service corporation contracts,
21 medical service corporation contracts, and health maintenance
22 organization subscriber contracts and certificates), or **【annuity】**
23 annuities and supplemental policies or contracts, for certificates under
24 direct group life insurance, health insurance, **【annuity】** annuities and
25 supplemental policies and contracts, for individual and group long-
26 term care insurance policies and contracts, and for unallocated annuity
27 contracts, issued by member insurers, except as limited by **【this act】**
28 P.L.1991, c.208 (C.17B:32A-1 et seq.); and

29 (2) policies or contracts issued by medical service corporations
30 declared to be insolvent or impaired by a court of competent
31 jurisdiction on or after September 1, 1987, but prior to the effective
32 date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), except as
33 otherwise limited by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

34 c. **【This act】** Except as otherwise provided in subsection d. of
35 this section, P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
36 coverage for:

37 (1) any portion of a policy or contract not guaranteed by the
38 member insurer, or under which the risk is borne by the policy or
39 contract **【holder】** owner;

40 (2) any policy or contract of reinsurance, unless assumption
41 certificates have been issued;

42 (3) any portion of a policy or contract to the extent that the rate of
43 interest on which it is based:

44 (a) averaged over the four-year period prior to the date on which
45 the association becomes obligated with respect to that policy or
46 contract, exceeds the lesser of:

- 1 (i) the rate of interest determined by subtracting three percentage
2 points from Moody's Corporate Bond Yield Average averaged for that
3 same four-year period, or for such lesser period if the policy or
4 contract was issued less than four years before the association became
5 obligated, or
- 6 (ii) the rate of interest specified in the standard valuation law, or
7 the rules of this State for determining the minimum standard for the
8 valuation of policies or contracts issued during the year of insolvency;
9 and
- 10 (b) on and after the date on which the association becomes
11 obligated with respect to that policy or contract, exceeds the rate of
12 interest determined by subtracting four percentage points from
13 Moody's Corporate Bond Yield Average as most recently available;
14 except that the limitation of this paragraph shall not preclude the
15 association from providing more extensive coverage if it is proceeding
16 under the authority of section 7 of **[this act]** P.L.1991, c.208
17 (C.17B:32A-7);
- 18 (4) any plan or program of an employer, association or similar
19 entity to provide life, health, or annuity benefits to its employees or
20 members to the extent that such plan or program is self-funded or
21 uninsured, including, but not limited to, benefits payable by an
22 employer, association or similar entity under:
- 23 (a) a Multiple Employer Welfare Arrangement as defined in the
24 Employee Retirement Income Security Act of 1974 (29 U.S.C.
25 s.1002);
- 26 (b) a minimum premium group insurance plan;
- 27 (c) a stop-loss group insurance plan; or
- 28 (d) an administrative services only contract;
- 29 (5) any portion of a policy or contract to the extent that it provides
30 dividends or experience rating credits, or provides that any fees or
31 allowances be paid to any person, including the **[holder]** owner of the
32 policy or contract, in connection with the service to or administration
33 of that policy or contract;
- 34 (6) any policy or contract issued in this State by a member insurer
35 at a time when it was not licensed or did not have a certificate of
36 authority to issue that policy or contract in this State;
- 37 (7) any unallocated annuity contract issued to an employee benefit
38 plan covered by the Pension Benefit Guaranty Corporation and whose
39 benefits will be paid under such system; **[and]**
- 40 (8) any portion of any unallocated annuity contract which is not
41 issued to or in connection with a specific plan providing benefits to
42 employees or an association of natural persons;
- 43 (9) a portion of a policy or contract to the extent it provides for
44 interest or other changes in value to be determined by the use of an
45 index or other external reference stated in the policy or contract, but
46 which has not been credited to the policy or contract, or as to which
47 the policy or contract owner's rights are subject to forfeiture, as of the
48 date the member insurer becomes an impaired or insolvent insurer

1 under P.L.1991, c.208 (C.17B:32A-1 et seq.), whichever is earlier. If a
2 policy or contract's interest or changes in value are credited less
3 frequently than annually, then for purposes of determining the values
4 that have been credited and are not subject to forfeiture under this
5 paragraph, the interest or change in value determined by using the
6 procedures defined in the policy or contract shall be credited as if the
7 contractual date of crediting interest or changing values was the date
8 of impairment or insolvency, whichever is earlier, and shall not be
9 subject to forfeiture;

10 (10) a policy or contract providing any hospital, medical,
11 prescription drug, or other health care benefits pursuant to Medicare
12 Parts C or D or the Medicaid program, 42 U.S.C. ss.1396 et seq.,
13 including the Children's Health Insurance Program (CHIP) which
14 provides health coverage to eligible children, either through Medicaid
15 or separate CHIP programs, or any regulations issued pursuant thereto,
16 or the "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:40J-
17 8 et seq.), or

18 (11) structured settlement annuity benefits to which a payee (or
19 beneficiary) has transferred rights in a structured settlement factoring
20 transaction as defined pursuant to section 5891 of the federal Internal
21 Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless of whether the
22 transaction occurred before or after that section became effective.

23 d. The exclusion from coverage referenced in paragraph (3) of
24 subsection c. of this section shall not apply to any portion of a policy
25 or contract, including a rider, that provides a long-term care or any
26 other health insurance benefits.

27 e. The benefits for which the association may become liable shall
28 in no event exceed the lesser of:

29 (1) the contractual obligations for which the member insurer is
30 liable or would have been liable if it were not an impaired or insolvent
31 insurer; or

32 (2) with respect to [any] one [insured individual] life, regardless
33 of the number of policies or contracts:

34 (a) \$500,000 in life insurance death benefits, but not more than
35 \$100,000 in net cash surrender and net cash withdrawal values for life
36 insurance;

37 (b) \$500,000 in present value annuity benefits, including net cash
38 surrender and net cash withdrawal values, but not more than \$100,000
39 in net cash surrender and net cash withdrawal values for annuity
40 benefits; provided, however, that in no event shall the association be
41 liable to expend more than \$500,000 in the aggregate with respect to
42 any one individual under this paragraph (2); or

43 (3) with respect to any one unallocated annuity contract,
44 \$2,000,000 in benefits; or

45 (4) with respect to any one group, blanket, or individual accident
46 or health insurance or [group, blanket or individual accident or health
47 insurance policy, unlimited benefits] ¹[or health benefit plan, policy
48 or contract:

1 (a) \$500,000 for coverages not defined as disability income
2 insurance, health benefit plans, or long-term care insurance, including
3 any net cash surrender and net cash withdrawal values;

4 (b) \$500,000 for disability income insurance and long-term care
5 insurance; provided, however, that in no event shall the association be
6 liable to expend more than \$500,000 in the aggregate with respect to
7 any one individual under this paragraph; and

8 (c) \$500,000 for health benefit plans; provided, however, that in
9 no event shall the association be liable to expend more than \$500,000
10 in the aggregate with respect to any one individual under this
11 paragraph] group, blanket or individual accident or health insurance
12 policy, unlimited benefits¹;

13 (5) with respect to each individual participating in a governmental
14 retirement benefit plan established under sections 401, 403(b), or 457
15 of the U.S. Internal Revenue Code, 26 U.S.C. ss.401, 403(b), and 457,
16 covered by an unallocated annuity contract or the beneficiaries of each
17 such individual if deceased, in the aggregate, \$500,000 in present
18 value annuity benefits, including net cash surrender and net cash
19 withdrawal values; and

20 (6) with respect to each payee of a structured settlement annuity
21 (or beneficiary or beneficiaries of the payee if deceased), \$500,000 in
22 present value annuity benefits, in the aggregate, including net cash
23 surrender and net cash withdrawal values, if any.

24 (7) The limitations set forth in this subsection are limitations on
25 the benefits for which the association is obligated before taking into
26 account either its subrogation and assignment rights or the extent to
27 which those benefits could be provided out of the assets of the
28 impaired or insolvent insurer attributable to covered policies. The costs
29 of the obligation of the association under P.L.1991, c.208 (C.17B:32A-
30 1 et seq.) may be met by the use of assets attributable to covered
31 policies or reimbursed to the association pursuant to its subrogation
32 and assignment rights.

33 ¹[(8) For purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.),
34 benefits provided by a long-term care rider to a life insurance policy or
35 annuity contract shall be considered the same type of benefits as the
36 base life insurance policy or annuity contract to which it relates.

37 (9) Dollar amounts allotted by the association under this section
38 shall increase or decrease based upon changes in the health care costs
39 component of the consumer price index from January 1, 2022, to the
40 date on which the member insurer becomes an insolvent insurer.]¹

41 [e.] f. A provider of health care services, in order to receive
42 payment directly from the association upon a claim of the provider
43 against an insured or enrollee, shall agree to forgive the insured of
44 20% of the obligation which would otherwise be paid by the member
45 insurer had it not been insolvent. The obligations of solvent member
46 insurers to pay all or part of the covered claim are not diminished by
47 the forgiveness provided in this subsection. The association is not

1 bound by an assignment of benefits executed with respect to the
2 coverage provided by the insolvent insurer. The association may
3 aggregate all claims owed health care providers when negotiating
4 direct payment of claims of all covered individuals.

5 (cf: P.L.1991, c.208, s.3)

6
7 3. Section 4 of P.L.1991, c.208 (C.17B:32A-4) is amended to
8 read as follows:

9 4. As used in **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):

10 "Account" means either of the two accounts created under
11 subsection b. of section 5 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-5).

13 "Association" means the New Jersey Life and Health Insurance
14 Guaranty Association created in subsection a. of section 5 of **[this**
15 **act]** P.L.1991, c.208 (C.17B:32A-5).

16 "Benefit plan" means the benefit plan of a specific employee,
17 union or association of natural persons.

18 "Called assessment" or "called" when used in the context of
19 assessments means that a notice has been issued by the association
20 to member insurers requiring that an authorized assessment be paid
21 within the timeframe set forth within the notice. An authorized
22 assessment becomes a called assessment when notice is mailed by
23 the association to member insurers.

24 "Commissioner" means the Commissioner of Banking and
25 Insurance.

26 "Contractual obligation" means any obligation under a policy or
27 contract or certificate under a group policy or contract, or portion
28 thereof, for which coverage is provided under section 3 of **[this act]**
29 P.L.1991, c.208 (C.17B:32A-3), but does not include unearned
30 premium under a health insurance policy or contract.

31 "Covered policy" or "covered contract" means any policy or
32 contract within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-
33 1 et seq.) as provided by section 3 of **[this act]** P.L.1991, c.208
34 (C.17B:32A-3).

35 "Department" means the Department of Banking and Insurance.

36 "Health benefit plan" means any hospital or medical expense
37 policy or certificate, health service corporation contract, hospital
38 service corporation contract, medical service corporation contract,
39 health maintenance organization subscriber contract, or any other
40 similar health contract. "Health benefit plan" does not include
41 accident-only insurance; credit insurance; dental-only insurance;
42 vision-only insurance; Medicare Supplement income; benefits for
43 long-term care, home health care, community-based care, or any
44 combination thereof; liability insurance, including general liability
45 insurance, or coverage issued as a supplement to liability insurance;
46 disability income insurance; coverage for on-site medical clinics; or
47 specified disease, hospital, confinement indemnity, or limited

1 benefit health insurance if the types of coverage do not provide
2 coordination of benefits and are provided under separate policies or
3 certificates.

4 "Impaired insurer" means a member insurer which, after the
5 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.):
6 (1) is determined by the commissioner to be potentially unable to
7 fulfill its contractual obligations; or (2) is placed under an order of
8 receivership, rehabilitation or conservation by a court of competent
9 jurisdiction.

10 "Insolvent insurer" means a member insurer which, after the
11 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.),
12 is placed under an order of liquidation by a court of competent
13 jurisdiction with a finding of insolvency.

14 "Member insurer" means any insurer, health service corporation,
15 hospital service corporation, medical service corporation, or health
16 maintenance organization licensed in this State or which holds a
17 certificate of authority to transact any kind of insurance, health
18 service corporation business, hospital service corporation business,
19 medical service corporation business, or health maintenance
20 organization business in this State for which coverage is provided
21 under section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3), and
22 includes any insurer, health service corporation, hospital service
23 corporation, medical service corporation, or health maintenance
24 organization whose license or certificate of authority in this State
25 may have been suspended, revoked, not renewed or voluntarily
26 withdrawn, but does not include:

27 (1) A dental service corporation established pursuant to the
28 provisions of P.L.1968, c.305 (C.17:48C-1 et seq.);

29 (2) A dental plan organization established pursuant to the
30 provisions of P.L.1979, c.478 (C.17:48D-1 et seq.);

31 (3) **【A health maintenance organization established pursuant to**
32 **the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.);】** (Deleted by
33 amendment, P.L. , c.) (pending before the Legislature as this
34 bill);

35 (4) A fraternal benefit society established pursuant to the
36 provisions of P.L.1959, c.167 (C.17:44A-1 et seq.);

37 (5) A mandatory state pooling plan;

38 (6) A mutual assessment company or any entity that operates on
39 an assessment basis to the extent of the assessment liability of its
40 members;

41 (7) An insurance exchange; **【or】**

42 (8) A licensed organized delivery system licensed pursuant to
43 P.L.1999, c.409 (C.17:48H-1 et seq.);

44 (9) A captive insurer, established pursuant to P.L.2011, c.25
45 (C.17:47B-1 et seq.); or

46 **【(8)】** (10) An entity similar to any of the above.

1 "Moody's Corporate Bond Yield Average" means the Monthly
2 Average Corporates as published by Moody's Investors Service,
3 Inc., or any successor thereto.

4 "Owner" of a policy or contract and "policyholder," "policy
5 owner," and "contract owner" means the person who is identified as
6 the legal owner under the terms of the policy or contract or who is
7 otherwise vested with legal title to the policy or contract through a
8 valid assignment completed in accordance with the terms of the
9 policy or contract and properly recorded as the owner of the books
10 of the member insurer. The terms owner, contract owner,
11 policyholder, and policy owner do not include persons with a mere
12 beneficial interest in a policy or contract.

13 "Person" means an individual or natural person, corporation,
14 partnership, association or voluntary organization.

15 "Plan sponsor" means:

16 (1) the employer in the case of a benefit plan established or
17 maintained by a single employer;

18 (2) the employee organization in the case of a benefit plan
19 established or maintained by an employee organization; or

20 (3) in a case of a benefit plan established or maintained by two
21 or more employers or jointly by one or more employers and one or
22 more employee organizations, the association, committee, joint
23 board of trustees, or other similar group of representatives of the
24 parties who establish or maintain the benefit plan.

25 "Premiums" means amounts or considerations received in any
26 calendar year on covered policies or contracts less premiums,
27 considerations and deposits returned thereon, and less dividends and
28 experience credits thereon. "Premiums" shall not include any
29 amounts or considerations received for any policies or contracts or
30 for the portions of any policies or contracts for which coverage is
31 not provided under subsection b. of section 3 of **[this act]**
32 P.L.1991, c.208 (C.17B:32A-3) except that assessable premium
33 shall not be reduced as the result of the application of: paragraph
34 (3) of subsection c. of section 3 relating to interest limitations; or
35 paragraph (2) of subsection d. of section 3 relating to limitations
36 with respect to any one insured or enrolled individual. "Premiums"
37 shall not include any premiums in excess of \$2,000,000 per contract
38 on any unallocated annuity contract.

39 "Resident" means a person who resides in this State at the time a
40 member insurer is an impaired insurer or insolvent insurer and to
41 whom a contractual obligation is owed. For the purposes of **[this**
42 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), a person may be a
43 resident of only one state, which in the case of a person other than a
44 natural person shall be its principal place of business. A citizen of
45 the United States that is a resident of a foreign country or of a
46 United States possession, territory, or protectorate that does not
47 have an association similar to the association created by P.L.1991,
48 c.208 (C.17B:32A-1 et seq.) shall be deemed a resident of the state

1 of domicile of the member insurer that issued the policies or
2 contracts.

3 “State” means a state, the District of Columbia, Puerto Rico, and
4 a United States possession, territory, or protectorate.

5 “Structured settlement annuity” means an annuity purchased in
6 order to fund periodic payments for a plaintiff or other claimant in
7 payment for or with respect to personal injury suffered by the
8 plaintiff or other claimant.

9 "Supplemental contract" means an agreement entered into for the
10 distribution of policy or contract proceeds.

11 "Unallocated annuity contract" means: (1) an annuity contract or
12 group annuity certificate which is not issued to and owned by an
13 individual, except to the extent of any annuity benefits guaranteed
14 to an individual by an insurer under that contract or certificate; or
15 (2) any unallocated life insurance or health insurance funding
16 agreement, where insurance certificates or contracts are not issued
17 to and owned by individuals, except to the extent of any life
18 insurance or health insurance benefits guaranteed to an individual
19 by an insurer under such funding agreement.

20 (cf: P.L.1991, c.208, s.4)

21

22 4. Section 5 of P.L.1991, c.208 (C.17B:32A-5) is amended to
23 read as follows:

24 5. a. There is created a nonprofit legal entity to be known as
25 the New Jersey Life and Health Insurance Guaranty Association.
26 All member insurers shall be and remain members of the
27 association as a condition of their authority or license to transact
28 insurance, health service corporation business, hospital service
29 corporation business, medical service corporation business, or
30 health maintenance organization business in this State. Any
31 member insurer shall remain a member insurer for four years after it
32 ceases to hold a certificate of authority or license. The association
33 shall perform its functions under the plan of operation established
34 and approved pursuant to section 9 of **[this act]** P.L.1991, c.208
35 (C.17B:32A-9) and shall exercise its powers through the board of
36 directors established under section 6 of **[this act]** P.L.1991, c.208
37 (C.17B:32A-6). The association shall be under the immediate
38 supervision of the commissioner and shall be subject to the
39 applicable provisions of the insurance laws of this State. Meetings
40 or records of the association may be opened to the public upon
41 majority vote of the board of directors of the association.

42 b. For purposes of administration and assessment the association
43 shall maintain two accounts:

44 (1) The life insurance and annuity account which shall include
45 the following subaccounts:

46 (a) life insurance subaccount;

47 (b) annuity subaccount; and

48 (c) unallocated annuity subaccount.

1 (2) The health **[insurance]** account.

2 (cf: P.L.1991, c.208, s.5)

3

4 5. Section 6 of P.L.1991, c.208 (C.17B:32A-6) is amended to
5 read as follows:

6 6. a. There shall be a board of directors of the association
7 which shall consist of not less than **[five]** seven nor more than
8 **[nine]** eleven member insurers serving terms as established in the
9 plan of operation. The members of the board shall be selected by
10 member insurers subject to the approval of the commissioner.
11 Vacancies on the board shall be filled for the remaining period of
12 the term by a majority vote of the remaining board members,
13 subject to the approval of the commissioner. To select the initial
14 board of directors, and initially organize the association, the
15 commissioner shall give notice to all member insurers of the time
16 and place of the organizational meeting. In determining voting
17 rights at the organizational meeting each member insurer shall be
18 entitled to one vote in person or by proxy. If the board of directors
19 is not selected within 60 days after notice of the organizational
20 meeting, the commissioner may appoint the initial members.

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

24 c. Members of the board may be reimbursed from the assets of
25 the association for reasonable expenses incurred by them as
26 members of the board of directors, but members of the board shall
27 not otherwise be compensated by the association for their services.

28 (cf: P.L.1991, c.208, s.6)

29

30 6. Section 7 of P.L.1991, c.208 (C.17B:32A-7) is amended to
31 read as follows:

32 7. a. If a member insurer is an impaired **[domestic]** insurer,
33 the association may, in its discretion, and subject to any conditions
34 imposed by the association that do not unreasonably impair the
35 contractual obligations of the impaired insurer, that are approved by
36 the commissioner~~],~~ and that are, except in cases of court ordered
37 receivership, conservation or rehabilitation, also approved by the
38 impaired insurer~~]~~:

39 (1) guaranty, assume, reissue, or reinsure, or cause to be
40 guaranteed, assumed, reissued, or reinsured, any or all of the
41 policies or contracts of the impaired insurer;

42 (2) provide such monies, pledges, notes, guarantees, or other
43 means as are proper to effectuate the provisions of paragraph (1) of
44 this subsection and assure payment of the contractual obligations of
45 the impaired insurer pending action under paragraph (1); or

46 (3) loan money to the impaired insurer.

1 b. [(1) If a member insurer is an impaired insurer, whether
2 domestic, foreign or alien, and the insurer is not paying claims in a
3 timely manner, then subject to the preconditions specified in
4 paragraph (2) of this subsection, the association shall, in its
5 discretion, either:

6 (a) take any of the actions specified in subsection a. of this
7 section, subject to the conditions therein; or

8 (b) provide substitute benefits in lieu of the contractual
9 obligations of the impaired insurer solely for health insurance
10 claims, periodic annuity benefit payments, death benefits,
11 supplemental benefits, and cash withdrawals for policy or contract
12 owners who petition therefor under claims of emergency or
13 hardship in accordance with standards proposed by the association
14 and approved by the commissioner.

15 (2) The association shall be subject to the requirements of
16 paragraph (1) of this subsection only if:

17 (a) the laws of the impaired insurer's state or country of
18 domicile provide that, until all payments of, or on account of, the
19 impaired insurer's contractual obligations by all guaranty
20 associations, along with all expenses thereof and interest on all such
21 payments and expenses, shall have been repaid to the guaranty
22 associations or a plan of repayment by the impaired insurer shall
23 have been approved by the guaranty associations,

24 (i) the delinquency proceeding shall not be dismissed,

25 (ii) neither the impaired insurer nor its assets shall be returned to
26 the control of its shareholders or private management, and

27 (iii) it shall not be permitted to solicit or accept new business or
28 have any suspended or revoked license restored; and

29 (b) (i) in the case of a domestic insurer, it has been placed
30 under an order of receivership or rehabilitation by a court of
31 competent jurisdiction in this State, or

32 (ii) in the case of a foreign or alien insurer, it has been prohibited
33 from soliciting or accepting new contracts in this State, except as
34 approved by the commissioner and as part of a plan of rehabilitation
35 approved by a court of competent jurisdiction.

36 (3) (a) The limitations of paragraphs (3) and (4) of subsection c.
37 of section 3 of this act shall not preclude the association from
38 providing more extensive coverage or guarantees, if it is proceeding
39 under the authority of this section and if that additional coverage is
40 an essential element in allowing a rehabilitation plan to succeed as
41 determined by the commissioner and a court of competent
42 jurisdiction.

43 (b) The commissioner and the association shall utilize the
44 authority of this section if a reasonable prospect exists that the
45 ultimate liabilities to be paid by the association and its member
46 insurers will be reduced as compared to the present liabilities
47 incurred if the association were to proceed under paragraph (2) of
48 subsection d. of section 3 of this act.

1 (c) In proceeding under paragraph (1) of subsection b. of this
2 section, without limitation on any authority or right of the
3 association under this act or any right of contract, the association
4 may enter into agreements with other guaranty associations to
5 secure coordination between associations and performance by those
6 associations with respect to policy or contract holders covered by
7 those associations equivalent to that provided to individuals covered
8 by this act.

9 (d) In proceeding under paragraph (1) of subsection b. of this
10 section, any funds actually expended by a member insurer for
11 benefits received by a person covered by this act, which were
12 subject to a plan of rehabilitation approved by the commissioner
13 and a court of competent jurisdiction, shall qualify as an assessment
14 under section 8 of this act after a final accounting.

15 (e) When the association is proceeding under paragraph (1) of
16 subsection b. of this section, the court shall authorize the
17 establishment of liens upon policy and contract holder cash
18 surrender values and cash withdrawal values limiting the ability of
19 policy and contract holders to withdraw deposits, surrender their
20 policies or contracts and receive the net cash surrender values and
21 net cash withdrawal values, for a term of not less than three nor
22 more than five years. The court, in establishing liens upon cash
23 surrender values or cash withdrawal values, shall approve such liens
24 upon the motion of the receiver as are necessary to enable the
25 impaired insurer to meet its death and disability claims and fund the
26 necessary operating expenses associated with its receivership to the
27 greatest extent possible with the available assets of the impaired
28 insurer within the time period covered by rehabilitation plan. The
29 standard to be applied by the court with respect to preferential
30 treatment is that all options offered to policy and contract holders
31 must represent the same pro rata claim on the general account assets
32 of the impaired insurer and be actuarially equivalent in present
33 value terms at the time they are approved.】 (Deleted by
34 amendment, P.L. , c.) (pending before the Legislature as this
35 bill);

36 c. If a member insurer is an insolvent insurer, the association
37 shall, in its discretion, either:

38 (1) (a) guaranty, assume, reissue, or reinsure, or cause to be
39 guaranteed, assumed, reissued, or reinsured, the policies or
40 contracts of the insolvent insurer; or

41 (b) assure payment of the contractual obligations of the
42 insolvent insurer; and

43 (c) provide those monies, pledges, guarantees, or other means as
44 are reasonably necessary to discharge those obligations; or

45 (2) with respect only to **【life and health insurance】** policies or
46 contracts, provide benefits and coverages in accordance with
47 subsection d. of this section.

1 d. When proceeding under **【**subparagraph (b) of paragraph (1)
2 of subsection b. or**】** paragraph (2) of subsection c. of this section,
3 the association shall, with respect only to **【**life and health
4 insurance**】** policies or contracts:

5 (1) assure payment of benefits **【**for premiums identical to the
6 premiums and benefits, except for terms of conversion and
7 renewability,**】** that would have been payable under the policies or
8 contracts of the impaired or insolvent insurer, for claims incurred:

9 (a) with respect to group policies or contracts, not later than the
10 earlier of the next renewal date under those policies or contracts or
11 45 days, but in no event less than 30 days, after the date on which
12 the association becomes obligated with respect to those policies or
13 contracts;

14 (b) with respect to individual policies or contracts, not later than
15 the earlier of the next renewal date, if any, under those policies or
16 contracts or one year, but in no event less than 30 days, from the
17 date on which the association becomes obligated with respect to
18 those policies or contracts;

19 (2) make a diligent effort to provide all known insureds,
20 enrollees, annuitants, or group **【**policyholders**】** policy or contract
21 owners with respect to group policies or contracts, 30 days' notice
22 of the termination of the benefits provided; and

23 (3) with respect to individual policies or contracts, and with
24 respect to individuals formerly an insured, enrollee, or annuitant
25 under group policies or contracts who are not eligible for
26 replacement group coverage, make available to each known insured,
27 enrollee, annuitant, or policy or contract owner of an individual
28 policy or contract if other than the insured, enrollee, or annuitant
29 substitute coverage on an individual basis in accordance with the
30 provisions of paragraph (4) of this subsection, if the insured,
31 enrollee, or annuitant had a right under law or the terminated policy
32 **【**or**】**, contract or annuity to convert coverage to individual coverage
33 or to continue an individual policy **【**or**】**, contract, or annuity in
34 force until a specified age or for a specified time, during which the
35 member insurer, health service corporation, hospital service
36 corporation, medical service corporation, or health maintenance
37 organization had no right unilaterally to make changes in any
38 provision of the policy **【**or**】**, contract, or annuity or had a right only
39 to make changes in premium by class.

40 (4) (a) In providing the substitute coverage required by
41 paragraph (3), the association may offer either to reissue the
42 terminated coverage or to issue an alternative policy or contract at
43 actuarially justified rates.

44 (b) Alternative or reissued policies or contracts shall be offered
45 without requiring evidence of insurability, and shall not provide for
46 any waiting period or exclusion that would not have applied under
47 the terminated policy or contract.

- 1 (c) The association may reinsure any alternative or reissued
2 policy or contract.
- 3 (5) (a) Alternative policies or contracts adopted by the
4 association shall be subject to the approval of the commissioner.
- 5 (b) Alternative policies or contracts shall contain at least the
6 minimum statutory provisions required in this State and provide
7 benefits that shall not be unreasonable in relation to the premium
8 charged under reasonable actuarial assumptions. The association
9 shall set the premium in accordance with a table of rates which it
10 shall adopt. The premium shall reflect the amount of insurance or
11 coverage to be provided and the age and class of risk of each
12 insured or enrollee.
- 13 (c) Any alternative policy or contract issued by the association
14 shall provide coverage of a type similar to that of the policy or
15 contract issued by the impaired or insolvent insurer, as determined
16 by the association.
- 17 (6) If the association elects to reissue terminated coverage at a
18 premium rate different from that charged under the terminated
19 policy or contract, the premium shall be actuarially justified and set
20 by the association in accordance with the amount of insurance or
21 coverage provided and the age and class of risk, subject to approval
22 of the commissioner.
- 23 (7) The association's obligations with respect to coverage under
24 any policy or contract of the impaired or insolvent insurer or under
25 any reissued or alternative policy or contract shall cease on the date
26 that coverage, policy or contract is replaced by another similar
27 coverage, policy or contract by the **【policyholder】** policy or
28 contract owner, the enrollee, the association, or the insured.
- 29 e. When proceeding under **【subparagraph (b) of paragraph (1)**
30 **of subsection b. or】** subsection c. of this section with respect to any
31 policy or contract carrying guaranteed minimum interest rates, the
32 association shall assure the payment or crediting of a rate of interest
33 at least equal to that specified in paragraph (3) of subsection c. of
34 section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3).
- 35 f. Nonpayment of premiums within 31 days after the date
36 required, after effective notice shall have been given of the terms of
37 any guaranteed, assumed, alternative or reissued policy or contract
38 or substitute coverage, shall terminate the association's obligations
39 under that policy, contract or coverage under **【this act】** P.L.1991,
40 c.208 (C.17B:32A-1 et seq.) with respect to that policy, contract or
41 coverage, except with respect to any claims incurred or any net cash
42 surrender value which may be due in accordance with the
43 provisions of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
- 44 g. Premiums due for coverage after entry of an order of
45 receivership or liquidation of any insolvent insurer shall belong to,
46 and be payable at the direction of, the association.

- 1 h. The protection provided by **[this act]** P.L.1991, c.208
2 (C.17B:32A-1 et seq.) shall not apply if any guaranty protection is
3 provided to residents of this State by the law of the domiciliary
4 state or jurisdiction of the impaired or insolvent insurer other than
5 this State.
- 6 i. In carrying out its duties under subsections b. and c. of this
7 section, the association may, subject to approval by the court:
- 8 (1) impose reasonable and necessary policy or contract liens in
9 connection with any guaranty, assumption or reinsurance
10 agreement, if the association finds that the amounts which can be
11 assessed under this act are less than the amounts needed to assure
12 full and prompt performance of the association's duties under **[this**
13 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), or that the economic or
14 financial conditions as they affect member insurers are sufficiently
15 adverse to render the imposition of those policy or contract liens, to
16 be in the public interest; or
- 17 (2) impose temporary moratoriums or liens on payments of cash
18 values and policy loans, or any other right to withdraw funds held
19 in conjunction with policies or contracts, in addition to any
20 contractual provisions for deferral of cash or policy loan value.
- 21 j. If the association fails to act within a reasonable period of
22 time as provided in **[subparagraph (b) of paragraph (1) of**
23 **subsection b. and]** subsections b. and c. **[and d.]** of this section, the
24 commissioner shall have the powers and duties of the association
25 provided by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) with
26 respect to impaired or insolvent insurers.
- 27 k. The association may render assistance and advice to the
28 commissioner concerning the receivership, conservation,
29 rehabilitation, liquidation, payment of claims, continuance of
30 coverage, or the performance of other contractual obligations of any
31 impaired or insolvent insurer.
- 32 l. The association shall have standing to appear before any
33 court in this State with jurisdiction over an impaired or insolvent
34 insurer with respect to which the association is or may become
35 obligated under **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.).
36 That standing shall extend to all matters germane to the powers and
37 duties of the association, including, but not limited to, proposals for
38 reinsuring, reissuing, modifying or guaranteeing the policies or
39 contracts of the impaired or insolvent insurer and the termination of
40 the policies or contracts and contractual obligations. The
41 association shall also have the right to appear or intervene before a
42 court in another state with jurisdiction over an impaired or insolvent
43 insurer for which the association is or may become obligated or
44 with jurisdiction over **[a third party]** any person or property against
45 whom the association may have rights through subrogation **[of the**
46 **insurer's policyholders]** or otherwise.

1 m. (1) Any person receiving benefits under **[this act]**
2 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be deemed to have
3 assigned the rights under, and any causes of action relating to, the
4 covered policy or contract to the association to the extent of the
5 benefits received pursuant to **[this act]** P.L.1991, c.208
6 (C.17B:32A-1 et seq.), whether the benefits are payments of or on
7 account of contractual obligations, continuation of coverage or
8 provision of substitute or alternative policies, contracts, or
9 coverages. The association may require an assignment to it of such
10 rights and causes of action by any payee, policy or contract owner,
11 beneficiary, insured, enrollee, or annuitant as a condition precedent
12 to the receipt of any right or benefits conferred by **[this act]**
13 P.L.1991, c.208 (C.17B:32A-1 et seq.) upon that person.

14 (2) The subrogation rights of the association under this
15 subsection shall have the same priority against the assets of the
16 impaired or insolvent insurer as that possessed by the person
17 entitled to receive benefits under **[this act]** P.L.1991, c.208
18 (C.17B:32A-1 et seq.).

19 (3) In addition to the rights of subrogation contained in
20 paragraphs (1) and (2) of this subsection, the association shall have
21 all common law rights of subrogation and any other equitable or
22 legal remedy which would have been available to the impaired or
23 insolvent insurer or **[holder of a]** policy or contract owner,
24 beneficiary, enrollee, or payee with respect to that policy or
25 contract.

26 (4) In addition to the rights contained in paragraphs (1), (2) and
27 (3) of this subsection, in the case of any unallocated annuity
28 contract for which benefits are paid by the association under **[this**
29 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
30 deemed to have assigned to it the rights and causes of action of any
31 employee or association of natural persons against the contract
32 **[holder]** owner of such unallocated annuity contract for the
33 amounts paid by the association under **[this act]** P.L.1991, c.208
34 (C.17B:32A-1 et seq.).

35 (5) If the preceding provisions of this subsection are invalid or
36 ineffective with respect to any person or claim for any reason, the
37 amount payable by the association with respect to the related
38 covered obligations shall be reduced by the amount realized by any
39 other person with respect to the person or claim that is attributable
40 to the policies or contracts (or portion thereof) covered by the
41 association.

42 (6) If the association has provided benefits with respect to a
43 covered obligation and a person recovers amounts as to which the
44 association has rights as described in the preceding paragraphs of
45 this subsection, the person shall pay to the association the portion of
46 the recovery attributable to the policies or contracts (or portion
47 thereof) covered by the association.

- 1 n. The association may:
- 2 (1) enter into any contracts necessary or proper to carry out the
3 provisions and purposes of **【this act】** P.L.1991, c.208 (C.17B:32A-
4 1 et seq.);
- 5 (2) sue or be sued, including taking any legal actions necessary
6 or proper to recover any unpaid assessments imposed pursuant to
7 section 8 of **【this act】** P.L.1991, c.208 (C.17B:32A-8) and to settle
8 claims or potential claims against it;
- 9 (3) borrow money to effectuate the purposes of **【this act】**
10 P.L.1991, c.208 (C.17B:32A-1 et seq.). Any notes or other evidence
11 of indebtedness of the association not in default shall be legal
12 investments for domestic insurers and may be carried as admitted
13 assets;
- 14 (4) employ or retain persons necessary to handle the financial
15 transactions of the association, and to perform other functions as are
16 necessary or proper under **【this act】** P.L.1991, c.208 (C.17B:32A-1
17 et seq.);
- 18 (5) take any legal action necessary to avoid payment of
19 improper claims;
- 20 (6) exercise, for the purposes of **【this act】** P.L.1991, c.208
21 (C.17B:32A-1 et seq.) and to the extent approved by the
22 commissioner, the powers of a domestic life insurer or health
23 insurer, health service corporations, hospital service corporations,
24 medical service corporations, or health maintenance organizations
25 but in no case shall the association issue insurance policies or
26 annuity contracts other than those issued to perform its obligations
27 under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.);
- 28 (7) organize itself as a corporation or in other legal form
29 permitted by the law of the State;
- 30 (8) request information from a person seeking coverage from the
31 association in order to aid the association in determining its
32 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.) with
33 respect to the person, and the person shall promptly comply with
34 the request;
- 35 (9) unless prohibited by law, in accordance with the terms and
36 conditions of the policy or contract, file for actuarially justified rate
37 or premium increases for any policy or contract for which it
38 provides coverage under P.L.1991, c.208 (C.17B:32A-1 et seq.);
39 and
- 40 (10) take other necessary or appropriate action to discharge its
41 duties and obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.)
42 or to exercise its powers under P.L.1991, c.208 (C.17B:32A-1 et
43 seq.).
- 44 o. The association may join an organization of one or more other
45 state associations of similar purposes, to further the purposes and
46 administer the powers and duties of the association.

1 p. (1) (a) At any time within 180 days of the date of the order
2 of liquidation, the association may elect to succeed to the rights and
3 obligations of the ceding member insurer that relate to policies,
4 contracts, or annuities covered, in whole or in part, by the
5 association, in each case under any one or more reinsurance
6 contracts entered into by the insolvent insurer and its reinsurers and
7 selected by the association. Any such assumption shall be effective
8 as of the date of the order of liquidation. The election shall be
9 effected by the association or the National Organization of Life and
10 Health Insurance Guaranty Associations (NOLGHA) on its behalf
11 sending written notice, return receipt requested, to the affected
12 reinsurers.

13 (b) To facilitate the earliest practicable decision about whether
14 to assume any of the contracts of reinsurance, and in order to
15 protect the financial positions of the estate, the receiver and each
16 reinsurer of the ceding member insurer shall make available upon
17 request to the association or the NOLGHA on its behalf as soon as
18 possible after commencement of formal delinquency proceedings:

19 (i) copies of in-force contracts of reinsurance and all related
20 files and records relevant to the determination of whether such
21 contracts should be assumed; and

22 (ii) notices of any defaults under the reinsurance contracts or
23 any known event or condition which with the passage of time could
24 become a default under the reinsurance contracts.

25 (c) The following subparagraphs shall apply to reinsurance
26 contracts so assumed by the association:

27 (i) The association shall be responsible for all unpaid premiums
28 due under the reinsurance contracts for periods both before and
29 after the date of the order of liquidation, and shall be responsible for
30 the performance of all other obligations to be performed after the
31 date of the order of liquidation, in each case which relate to
32 policies, contracts, or annuities covered, in whole or in part, by the
33 association. The association may charge policies, contracts, or
34 annuities covered in part by the association, through reasonable
35 allocation methods, the costs for reinsurance in excess of the
36 obligations of the association and shall provide notice and an
37 accounting of these charges to the liquidator;

38 (ii) The association shall be entitled to any amounts payable by
39 the reinsurer under the reinsurance contracts with respect to losses
40 or events that occur in periods after the date of the order of
41 liquidation and that relate to policies, contracts, or annuities
42 covered, in whole or in part, by the association, provided that, upon
43 receipt of those amounts, the association shall be obliged to pay to
44 the beneficiary under the policy, contracts, or annuity on account of
45 which the amounts were paid a portion of the amount equal to the
46 lesser of (1) the amount received by the association; and (2) the
47 excess of the amount received by the association over the amount
48 equal to the benefits paid by the association on account of the

1 policy, contracts, or annuity less the retention of the insurer
2 applicable to the loss or event.

3 (iii) Within 30 days following the association's election (the
4 "election date"), the association and each reinsurer under contracts
5 assumed by the association shall calculate the net balance due to or
6 from the association under each reinsurance contract as of the
7 election date with respect to policies, contracts or annuities covered,
8 in whole or in part, by the association, which calculation shall give
9 full credit to all items paid by either the member insurer or its
10 receiver or the reinsurer prior to the election date. The reinsurer
11 shall pay the receiver any amounts due for losses or events prior to
12 the date of the order of liquidation, subject to any set-off for
13 premiums unpaid for periods prior to the date, and the association
14 or reinsurer shall pay any remaining balance due the other, in each
15 case within five days of the completion of the aforementioned
16 calculation. Any disputes over the amounts due to either the
17 association or the reinsurer shall be resolved by arbitration pursuant
18 to the terms of the affected reinsurance contracts or, if the contract
19 contains no arbitration clause, as otherwise provided by law. If the
20 receiver has received any amounts due the association pursuant to
21 subsubparagraph (ii) of this subparagraph, the receiver shall remit
22 the same to the association as promptly as practicable.

23 (iv) If the association or receiver, on the association's behalf,
24 within 60 days of the election date, pays the unpaid premiums due
25 for periods both before and after the election date that relate to
26 policies, contracts, or annuities covered, in whole or in part, by the
27 association, the reinsurer shall not be entitled to terminate the
28 reinsurance contracts for failure to pay premium insofar as the
29 reinsurance contracts relate to policies, contracts, or annuities
30 covered, in whole or in part, by the association, and shall not be
31 entitled to set off any unpaid amounts due under other contracts, or
32 unpaid amounts due from parties other than the association, against
33 amounts due the association.

34 (2) During the period from the date of the order of liquidation
35 until the election date (or, if the election date does not occur, until
36 180 days after the date of the order of liquidation):

37 (a) (i) the association and the reinsurer shall not have rights or
38 obligations under reinsurance contracts that the association has the
39 right to assume under paragraph (1) of this subsection, whether for
40 period prior to or after the date of the order of liquidation; and

41 (ii) the reinsurer, the receiver and the association shall, to the
42 extent, practicable, provide each other data and records reasonably
43 requested.

44 (b) provided that once the association has elected to assume a
45 reinsurance contract, the parties' rights and obligations shall be
46 governed paragraph (1) of this subsection.

47 (3) If the association does not elect to assume a reinsurance
48 contract by the election date pursuant to paragraph (1) of this

1 subsection, the association shall have no rights or obligations, in
2 each case for periods both before and after the date of the order of
3 liquidation, with respect to the reinsurance contract.

4 (4) When policies, contracts, or annuities, or covered
5 obligations with respect thereto, are transferred to an assuming
6 insurer, reinsurance on the policies, contracts, or annuities may also
7 be transferred by the association, in the case of contracts assumed
8 under paragraph (1) of this subsection, subject to the following:

9 (a) unless the reinsurer and the assuming insurer agree
10 otherwise, the reinsurance contract transferred shall not cover any
11 new policies of insurance, contracts, or annuities in addition to
12 those transferred;

13 (b) the obligations described in paragraph (1) of this subsection
14 shall no longer apply with respect to matters arising after the
15 effective date of the transfer; and

16 (c) notice shall be given in writing, return receipt requested, by
17 the transferring party to the affected reinsurer not less than 30 days
18 prior to the effective date of the transfer.

19 (5) The provisions of this subsection shall supersede the
20 provisions of any State law or any affected reinsurance contract that
21 provides for or requires any payment of reinsurance proceeds, on
22 account of losses or events that occur in periods after the date of the
23 order of liquidation, to the receiver of the insolvent insurer or any
24 other person. The receiver shall remain entitled to any amounts
25 payable by the reinsurer under the reinsurance contracts with
26 respect to losses or events that occur in periods prior to the date of
27 the order of liquidation, subject to applicable setoff provisions.

28 (6) Except as otherwise provided in this subsection, nothing in
29 this subsection shall alter or modify the terms and conditions of any
30 reinsurance contract. Nothing in this subsection shall abrogate or
31 limit any rights of any reinsurer to claim that it is entitled to rescind
32 a reinsurance contract. Nothing in this subsection shall give a
33 policyholder, contract owner, enrollee, certificate holder, or
34 beneficiary an independent cause of action against a reinsurer that is
35 not otherwise set forth in the reinsurance contract. Nothing in this
36 subsection shall limit or affect the association's rights as a creditor
37 of the estate against the assets of the estate. Nothing in this
38 subsection shall apply to reinsurance agreements covering property
39 or casualty risks.

40 q. The board of directors of the association shall have
41 discretion and may exercise reasonable business judgment to
42 determine the means by which the association is to provide the
43 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) in an economical
44 and efficient manner.

45 r. Where the association has arranged or offered to provide the
46 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) to a covered
47 person under a plan or arrangement that fulfills the association's
48 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.), the person

1 shall not be entitled to benefits from the association in addition to
2 or other than those provided under the plan or arrangement.

3 s. Venue in a suit against the association arising under
4 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be in Monmouth
5 County. The association shall not be required to give an appeal
6 bond in an appeal that relates to a cause of action arising under
7 P.L.1991, c.208 (C.17B:32A-1 et seq.).

8 t. In carrying out its duties in connection with guaranteeing,
9 assuming, reissuing, or reinsuring policies or contracts under
10 subsections a., b., c, or d. of this section, the association may issue
11 substitute coverage for a policy or contract that provides an interest
12 rate, crediting rate or similar factor determined by use of an index
13 or other external reference stated in the policy or contract employed
14 in calculating returns or changes in value by issuing an alternative
15 policy or contract in accordance with the following provisions:

16 (1) in lieu of the index or external reference provided for in the
17 original policy or contract, the alternative policy or contract
18 provides for a fixed interest rate; payment of dividends with
19 minimum guarantees; or a different method for calculating interest
20 or changes in value;

21 (2) there is no requirement for evidence of insurability, waiting
22 period or other exclusion that would not have applied under the
23 replaced policy or contract; and

24 (3) the alternative policy or contract is substantially similar to
25 the replaced policy or contract in all other material terms.

26 u. A deposit in this State, held pursuant to law or required by
27 the commissioner for the benefit of creditors, including policy or
28 contract owners, not turned over to the domiciliary liquidator upon
29 the entry of a final order of liquidation or order approving a
30 rehabilitation plan of a member insurer domiciled in this State or in
31 a reciprocal state pursuant to section 57 of P.L.1992, c.65
32 (C.17B:32-87) shall be promptly paid to the association. The
33 association shall be entitled to retain a portion of any amount so
34 paid to it equal to the percentage determined by dividing the
35 aggregate amount of policy or contract owners' claims related to
36 that insolvency for which the association has provided statutory
37 benefits by the aggregate amount of all policy or contract owners'
38 claims in the State related to that insolvency and shall remit to the
39 domiciliary receiver the amount so paid to the association less the
40 amount retained pursuant to this subsection. Any amount so paid to
41 the association and retained by it shall be treated as a distribution of
42 estate assets pursuant to applicable State receivership law dealing
43 with early access disbursements.

44 (cf: P.L.1991, c.208, s.7)

45

46 7. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to
47 read as follows:

1 8. a. For the purpose of providing the funds necessary to carry
2 out the powers and duties of the association, the board of directors
3 shall assess the member insurers, separately for each account, at
4 such time and for such amounts as the board finds necessary.
5 Assessments shall be due not less than 30 days after prior written
6 notice to the member insurers and shall accrue interest at the
7 percentage of interest prescribed in the Rules Governing the Courts
8 of the State of New Jersey for judgments, awards and orders for the
9 payment of money, on and after the due date.

10 b. There shall be two classes of assessments, as follows:

11 (1) Class A assessments shall be made for the purpose of
12 meeting administrative and legal costs of the association which are
13 not objected to by the commissioner and other expenses **【and**
14 **examinations conducted under the authority of subsection e. of**
15 **section 11 of this act】**. Class A assessments shall also be made,
16 upon the request of the commissioner, for the purpose of meeting
17 costs incurred by or on behalf of the department in the
18 administration of an insolvent insurer to the extent those costs
19 exceed assets of the insolvent insurer available for that purpose.
20 Class A assessments need not be related to a particular impaired or
21 insolvent insurer. The amount of any Class A assessment shall be
22 determined by the board.

23 (2) Class B assessments shall be made to the extent necessary to
24 carry out the powers and duties of the association under section 7 of
25 **【this act】** P.L.1991, c.208 (C.17B:32A-7) with respect to an
26 impaired or an insolvent insurer. The amount of any Class B
27 assessment, except for assessments related to long-term care
28 insurance, shall be allocated for assessment purposes **【among】**
29 between the accounts and among subaccounts of the life insurance
30 and annuity account, pursuant to an allocation formula which may
31 be based on the premiums or reserves of the impaired or insolvent
32 insurer or any other standard deemed by the board in its sole
33 discretion as being fair and reasonable under the circumstances.

34 (3) The amount of Class B assessments for long-term care
35 insurance written by the impaired or insolvent insurer shall be
36 allocated according to a methodology included in the plan of
37 operation and approved by the commissioner. The methodology
38 shall provide for 50 percent of the assessment to be allocated to
39 accident and health member insurers and 50 percent to be allocated
40 to life and annuity member insurers.

41 c. (1) Class B assessments against member insurers for each
42 account and subaccount shall be in the proportion that the premiums
43 received on business in this State by each assessed member insurer
44 on policies or contracts covered by each account for the three most
45 recent calendar years for which information is available preceding
46 the year in which the member insurer became impaired or insolvent,
47 as the case may be, bears to such premiums received on business in
48 this State for such calendar years by all assessed member insurers.

1 (2) Assessments for funds to meet the requirements of the
2 association with respect to an impaired or insolvent insurer shall be
3 made as necessary to implement the purposes of **[this act]**
4 P.L.1991, c.208 (C.17B:32A-1 et seq.). Classification of
5 assessments under subsection b. of this section and computation of
6 assessments under this subsection c. shall be made with a
7 reasonable degree of accuracy, recognizing that exact
8 determinations may not always be possible.

9 d. The association shall **[exempt,]** abate or defer, in whole or
10 in part, the assessment of a member insurer if, in the opinion of the
11 commissioner, payment of the assessment would endanger the
12 ability of the member insurer to fulfill its contractual obligations or
13 places the member insurer in an unsafe or unsound financial
14 condition. In the event an assessment against a member insurer is
15 **[exempted,]** abated or deferred, in whole or in part, the amount by
16 which that assessment is **[exempted,]** abated or deferred shall be
17 assessed against the other member insurers in a manner consistent
18 with the basis for assessments set forth in this section. Once the
19 conditions that caused a deferral have been removed or rectified, the
20 member insurer shall pay all assessments that were deferred
21 pursuant to a repayment plan approved by the commissioner.

22 e. (1) The total of all assessments imposed under subsection b.
23 of this section upon a member insurer for the life insurance and
24 annuity account and for each subaccount thereunder shall not in any
25 one calendar year exceed two percent and for the health **[insurance]**
26 account shall not in any one calendar year exceed two percent of
27 that member insurer's average premiums, as reported in the annual
28 statement in a form prescribed by the commissioner, received in this
29 State on the policies and contracts covered by the account during
30 the three calendar years preceding the year in which the member
31 insurer became an impaired or insolvent insurer. If the maximum
32 assessment, together with the other assets of the association in any
33 account, does not provide in any one year in either account an
34 amount sufficient to carry out the responsibilities of the association,
35 the necessary additional funds shall be assessed as soon thereafter
36 as permitted by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.)

37 (2) If a one percent assessment for any subaccount of the life
38 insurance and annuity account in any one year does not provide an
39 amount sufficient to carry out the responsibilities of the association,
40 then pursuant to paragraph (1) of subsection c. of this section, the
41 board shall assess all subaccounts of the life insurance and annuity
42 account for the necessary additional amount, subject to the
43 maximum stated in paragraph (1) of this subsection.

44 (3) The board may provide in the plan of operation a method of
45 allocating funds among claims, whether relating to one or more
46 impaired or insolvent insurers, when the maximum assessment will
47 be insufficient to cover anticipated claims.

1 f. The board may, by an equitable method as established in the
2 plan of operation, refund to member insurers, in proportion to the
3 contribution of each member insurer to that account, the amount by
4 which the assets of an account exceed the amount the board, with
5 the concurrence of the commissioner, finds is necessary to carry out
6 during the coming year the obligations of the association with
7 respect to that account, including assets accruing from assignment,
8 subrogation, net realized gains and income from investments. A
9 reasonable amount may be retained in any account to provide funds
10 for the continuing expenses of the association and for future losses.

11 g. Except for that portion of assessments **[which]** that may be
12 offset against premium taxes pursuant to section 18 of **[this act]**
13 P.L.1991, c.208 (C.17B:32A-18), it shall be proper for any member
14 insurer, in determining its premium rates and policy owner
15 dividends as to any kind of insurance, health service corporation
16 business, hospital service corporation business, medical service
17 corporation business, or health maintenance organization business
18 within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
19 seq.), to consider the amount reasonably necessary to meet its
20 assessment obligations under **[this act]** P.L.1991, c.208
21 (C.17B:32A-1 et seq.).

22 h. The association shall issue to each member insurer paying an
23 assessment pursuant to **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
24 seq.), other than a Class A assessment, a certificate of contribution,
25 in a form and manner prescribed by the commissioner, for the
26 amount of the assessment so paid. All outstanding certificates shall
27 be of equal dignity and priority without reference to amount or date
28 of issue. A certificate of contribution may be shown by the member
29 insurer in its financial statement as an asset in such form and
30 manner and for such amount and period of time as the
31 commissioner may approve.

32 i. (1) A member insurer that wishes to protest all or part of an
33 assessment shall pay when due the full amount of the assessment as
34 set forth in the notice provided by the association. The payment
35 shall be available to meet association obligations during the
36 pendency of the protest or any subsequent appeal. Payment shall be
37 accompanied by a statement in writing that the payment is made
38 under protest and setting forth a brief statement of the grounds for
39 the protest.

40 (2) Within 60 days following the payment of an assessment
41 under protest by a member insurer, the association shall notify the
42 member insurer in writing of its determination with respect to the
43 protest unless the association notifies the member insurer that
44 additional time is required to resolve the issues raised by the
45 protest.

46 (3) Within 30 days after a final decision has been made, the
47 association shall notify the protesting member insurer in writing of

1 that final decision. Within 60 days of receipt of notice of the final
2 decision, the protesting member insurer may appeal that final action
3 to the commissioner.

4 (4) In the alternative to rendering a final decision with respect to
5 a protest based on a question regarding the assessment base, the
6 association may refer protests to the commissioner for a final
7 decision, with or without a recommendation from the association.

8 (5) If the protest or appeal on the assessment is upheld, the
9 amount paid in error or excess shall be returned to the member
10 insurer. Interest on a refund due a protesting member insurer shall
11 be paid at the rate actually earned by the association.

12 j. The association may request information of member insurers
13 in order to aid in the exercise of its power under this section and
14 member insurers shall promptly comply with a request.

15 (cf: P.L.1994, c.180 s.1)

16

17 8. Section 9 of P.L.1991, c.208 (C.17B:32A-9) is amended to
18 read as follows:

19 9. a. (1) The association shall submit to the commissioner a
20 plan of operation and any amendments thereto necessary or suitable
21 to assure the fair, reasonable, and equitable administration of the
22 association. The plan of operation and any amendments thereto
23 shall become effective upon the commissioner's written approval or
24 at the expiration of 30 days after submission if it has not been
25 disapproved.

26 (2) If the association fails to submit a suitable plan of operation
27 within 120 days following the effective date of **[this act]** P.L.1991,
28 c.208 (C.17B:32A-1 et seq.) or if at any time thereafter the
29 association fails to submit suitable amendments to the plan, the
30 commissioner shall adopt such plan or amendments necessary to
31 effectuate the provisions of **[this act]** P.L.1991, c.208 (C.17B:32A-
32 1 et seq.). The plan or amendments shall continue in force until
33 modified by the commissioner or superseded by a plan submitted by
34 the association and approved by the commissioner.

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

36 c. The plan of operation shall, in addition to requirements
37 enumerated elsewhere in **[this act]** P.L.1991, c.208 (C.17B:32A-1
38 et seq.):

39 (1) establish procedures for handling the assets of the
40 association;

41 (2) establish the amount and method of reimbursing members of
42 the board of directors under subsection c. of section 6 of **[this act]**
43 P.L.1991, c.208 (C.17B:32A-6);

44 (3) establish regular places and times for meetings, including
45 telephone conference calls, of the board of directors;

46 (4) establish procedures for records to be kept of all financial
47 transactions of the association, its agents, and the board of
48 directors;

- 1 (5) establish the procedures whereby selections for the board of
2 directors will be made and submitted to the commissioner;
- 3 (6) establish any additional procedures for the imposition of
4 assessments under section 8 of **【this act】** P.L.1991, c.208
5 (C.17B:32A-8); **【and】**
- 6 (7) contain additional provisions necessary or proper for the
7 execution of the powers and duties of the association;
- 8 (8) establish procedures whereby a director may be removed for
9 cause, including in the case where a member insurer director
10 becomes an impaired or insolvent insurer; and
- 11 (9) require the board of directors to establish a policy and
12 procedures for addressing conflicts of interests.
- 13 d. The plan of operation may provide for the delegation of any
14 or all powers and duties of the association, except those set forth in
15 paragraph (3) of subsection m. of section 7 of P.L.1991, c.208
16 (C.17B:32A-7) and section 8 of **【this act】** P.L.1991, c.208
17 (C.17B:32A-8), to a corporation, association, or other organization
18 which performs or will perform functions similar to those of the
19 association, or its equivalent, in two or more other states. Such a
20 corporation, association, or organization shall be reimbursed for any
21 payments made on behalf of the association and shall be paid for its
22 performance of any function of the association. A delegation under
23 this subsection d. shall take effect only with the approval of both
24 the board of directors and the commissioner, and may be made only
25 to a corporation, association, or organization which extends
26 protection not substantially less favorable or effective than that
27 provided by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
28 (cf: P.L.1991, c.208, s.9)
29
- 30 9. Section 10 of P.L.1991, c.208 (C.17B:32A-10) is amended
31 to read as follows:
- 32 10. a. In addition to the duties and powers enumerated
33 elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), the
34 commissioner shall:
- 35 (1) upon request of the board of directors, provide the
36 association with a statement of the premiums in this State and any
37 other appropriate states for each member insurer;
- 38 (2) when an impairment is declared and the amount of the
39 impairment is determined, serve a demand upon the impaired
40 insurer to make good the impairment within a reasonable time.
41 Notice to the impaired insurer shall constitute notice to its
42 shareholders, if any. The failure of the impaired insurer to
43 promptly comply with a demand shall not excuse the association
44 from the performance of its powers and duties under **【this act】**
45 P.L.1991, c.208 (C.17B:32A-1 et seq.);

1 (3) in any liquidation or rehabilitation proceeding involving a
2 domestic member insurer, be appointed as the liquidator or
3 rehabilitator.

4 b. The commissioner may suspend or revoke, after notice and
5 hearing, the certificate of authority to transact **【insurance】** business
6 in this State of any member insurer which fails to pay an assessment
7 when due or fails to comply with the plan of operation. As an
8 alternative, the commissioner may levy a penalty on any member
9 insurer which fails to pay an assessment when due. That penalty
10 shall not exceed five percent of the unpaid assessment per month,
11 but no penalty shall be less than \$100 per month.

12 c. Any action of the board of directors or the association may
13 be appealed to the commissioner by any member insurer if that
14 appeal is taken within **【30】** 60 days of its receipt of notice of the
15 final action being appealed. If a member **【company】** insurer is
16 appealing an assessment, the amount assessed shall be paid to the
17 association and made available to meet association obligations
18 during the pendency of an appeal. If the appeal of an assessment is
19 upheld, the amount paid in error or excess shall be returned to the
20 member **【company】** insurer. Any final action or order of the
21 commissioner shall be subject to judicial review in a court of
22 competent jurisdiction.

23 d. The liquidator, rehabilitator, or conservator **【or receiver】** of
24 any impaired insurer may notify all interested persons of the effect
25 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
26 (cf: P.L.1991, c.208, s.10)
27

28 10. Section 11 of P.L.1991, c.208 (C.17B:32A-11) is amended
29 to read as follows:

30 11. a. To aid in the detection and prevention of member insurer
31 insolvencies or impairments, the commissioner may:

32 (1) notify the commissioners of insurance or comparable
33 officials of all the other states, territories of the United States and
34 the District of Columbia within 30 days when he takes any of the
35 following actions against a member insurer:

36 (a) revokes its certificate of authority or license;

37 (b) suspends its certificate of authority or license; or

38 (c) makes any formal order that the member insurer restrict its
39 premium writing, obtain additional contributions to surplus,
40 withdraw from this State, reinsure all or part of its business, or
41 increase capital, surplus, or any other account for the security of
42 **【policyholders】** policy or contract owners, certificate holders, or
43 creditors.

44 Notice shall be made in any form the commissioner deems
45 appropriate, including notification under the auspices of the
46 National Association of Insurance Commissioners, hereinafter
47 referred to as NAIC.

1 (2) report to the board of directors when he has taken any of the
2 actions set forth in paragraph (1) of this subsection or has received
3 notification from the commissioner of insurance or comparable
4 official of any other jurisdiction that any such action has been taken
5 in that jurisdiction. The report to the board of directors shall contain
6 all significant details of the action taken or of any such notification
7 received from another jurisdiction.

8 (3) report to the board of directors when he has reasonable cause
9 to believe from any examination, whether completed or in process,
10 of any member **[company]** insurer that the **[company]** member
11 insurer may be an impaired or insolvent insurer. The report and the
12 information therein shall be kept confidential by the board of
13 directors.

14 (4) furnish to the board of directors the NAIC Insurance
15 Regulatory Information System (IRIS) ratios and a list of
16 companies not included in the ratios developed by the NAIC. The
17 board may use the information contained therein in carrying out its
18 duties and responsibilities under this section. The report and
19 information contained therein shall be kept confidential by the
20 board of directors until such time as made public by the
21 commissioner or other lawful authority.

22 b. The commissioner may seek the advice and recommendations
23 of the board of directors **[or member insurers]** concerning any
24 matter affecting **[his]** the duties and responsibilities of the
25 commissioner regarding the financial condition of member insurers
26 and **[companies]** member insurers, health service corporations,
27 hospital service corporations, medical service corporations, or
28 health maintenance organizations seeking admission to transact
29 **[insurance]** business in this State.

30 c. The board of directors **[or any member thereof]** may, upon
31 majority vote, make reports and recommendations to the
32 commissioner upon any matter germane to the solvency,
33 liquidation, rehabilitation, conservation or receivership of any
34 member insurer or germane to the solvency of any **[company]**
35 insurer, health service corporation, hospital service corporation,
36 medical service corporation, or health maintenance organization
37 seeking to do **[insurance]** business in this State. Reports and
38 recommendations made pursuant to this subsection shall not be
39 considered public documents.

40 d. **[It shall be the duty of the]** The board of directors may, upon
41 majority vote, **[to]** notify the commissioner of any information
42 indicating any member insurer may be an impaired or insolvent
43 insurer.

44 e. **[The board of directors may, upon majority vote, request that**
45 **the commissioner order an examination of any member insurer**
46 **which the board in good faith believes may be an impaired or**
47 **insolvent insurer. Such an examination may be conducted as a**

1 NAIC examination or may be conducted by those persons as the
2 commissioner designates. The cost of the examination may be paid
3 by the association and the examination report shall be treated as are
4 other examination reports. In no event shall the examination report
5 be released to the board of directors of the association prior to its
6 release to the public, but this shall not preclude the commissioner
7 from taking action permitted by subsection a. of this section.

8 The commissioner shall notify the board of directors when the
9 examination is completed. The request for an examination shall be
10 kept on file by the commissioner, but it shall not be open to public
11 inspection, if at all, prior to the release of the examination report to
12 the public】 (Deleted by amendment, P.L. , c. (pending before
13 the Legislature as this bill).

14 f. The board of directors may, upon majority vote, make
15 recommendations to the commissioner for the detection and
16 prevention of member insurer insolvencies.

17 【g. The board of directors may, at the conclusion of any insurer
18 insolvency in which the association was obligated to pay covered
19 claims, prepare a report to the commissioner containing any
20 information it may have in its possession bearing on the history and
21 causes of that insolvency. The board shall cooperate with the
22 boards of directors of guaranty associations in other states in
23 preparing a report on the history and causes of insolvency of a
24 particular insurer, and may adopt by reference any report prepared
25 by another association】 (Deleted by amendment, P.L. , c.
26 (pending before the Legislature as this bill).

27 (cf: P.L.1991, c.208, s.11)

28

29 11. Section 12 of P.L.1991, c.208 (C.17B:32A-12) is amended
30 to read as follows:

31 12. a. Nothing in 【this act】 P.L.1991, c.208 (C.17B:32A-1 et
32 seq.) or P.L. , c. (C.) (pending before the Legislature as
33 this bill) shall be construed to reduce the liability for unpaid
34 assessments of the insureds or enrollees of an impaired or insolvent
35 insurer operating under a plan with assessment liability.

36 b. Records shall be kept of all negotiations and meetings in
37 which the association or its representatives are involved to discuss
38 the activities of the association in carrying out its powers and duties
39 under section 7 of 【this act】 P.L.1991, c.208 (C.17B:32A-7).
40 Records of those negotiations or meetings shall be made public only
41 upon the termination of a liquidation, rehabilitation, or conservation
42 【or receivership】 proceeding involving an impaired or insolvent
43 insurer, upon the termination of the impairment or insolvency of the
44 member insurer, or upon the order of a court of competent
45 jurisdiction.

46 c. For the purpose of carrying out its obligations under 【this
47 act】 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be

1 deemed to be a creditor of an impaired or insolvent insurer to the
2 extent of assets attributable to covered policies or contracts reduced
3 by any amounts to which the association is entitled as subrogee
4 pursuant to subsection m. of section 7 of **【this act】** P.L.1991, c.208
5 (C.17B:32A-7). Assets of an impaired or insolvent insurer
6 attributable to covered policies or contracts shall be used to
7 continue all covered policies or contracts and pay all contractual
8 obligations of the impaired or insolvent insurer as required by **【this**
9 **act】** P.L.1991, c.208 (C.17B:32A-1 et seq.). For purposes of this
10 subsection, assets attributable to covered policies or contracts are
11 that proportion of the assets which the reserves that should have
12 been established for such policies or contracts bears to the reserves
13 that should have been established for all policies or contracts of
14 insurance or health benefit plans written by the impaired or
15 insolvent insurer.

16 d. As a creditor of the impaired or insolvent insurer as
17 established in subsection c. of this section and consistent with
18 section 33 of P.L.1992, c.65 (C.17B:32-63), the association and
19 other similar associations shall be entitled to receive a disbursement
20 of assets out of the marshaled assets, from time to time as the assets
21 become available to reimburse it, as a credit against contractual
22 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.). If the
23 liquidator has not, within 120 days of a final determination of
24 insolvency of a member insurer by the receivership court, made an
25 application to the court for the approval of a proposal to disburse
26 assets out of marshaled assets to guaranty associations having
27 obligations because of the insolvency, then the association shall be
28 entitled to make application to the receivership court for approval of
29 its own proposal to disburse these assets.

30 (1) Prior to the termination of any receivership, liquidation,
31 rehabilitation or conservation proceeding, the court may take into
32 consideration the contributions of the respective parties, including
33 the association, the shareholders, enrollees, certificate holders, and
34 **【policyowners】** policy or contract owners of an insolvent insurer,
35 and any other party with a bona fide interest in making an equitable
36 distribution of the ownership rights of that insolvent insurer. In
37 making such a determination, consideration shall be given to the
38 welfare of the **【policyholders】** policy or contract owners, enrollees,
39 and certificate holders, and to the reasonable requirements of a
40 continuing or successor member insurer.

41 (2) No dividend or other distribution to stockholders or
42 policyholders of an impaired or insolvent insurer shall be made
43 until and unless the total amount of valid claims of the association
44 with interest thereon for funds expended in carrying out its powers
45 and duties under section 7 of **【this act】** P.L.1991, c.208
46 (C.17B:32A-7) with respect to that member insurer have been
47 recovered by the association.

1 e. (1) If an order for liquidation or rehabilitation of **[an]** a
2 member insurer domiciled in this State has been entered, the
3 receiver appointed under that order shall have a right to recover on
4 behalf of the member insurer, from any affiliate that controlled it,
5 the amount of distributions, other than stock dividends paid by the
6 member insurer on its capital stock, made at any time during the
7 five years preceding the petition for liquidation or rehabilitation
8 subject to the limitations of paragraphs (2) through (4) of this
9 subsection.

10 (2) No such distribution shall be recoverable if the member
11 insurer shows that the distribution was lawful and reasonable when
12 paid, and that the member insurer did not know and could not
13 reasonably have known that the distribution might adversely affect
14 the ability of the member insurer to fulfill its contractual
15 obligations.

16 (3) Any person who was an affiliate that controlled the member
17 insurer at the time the distributions were paid shall be liable up to
18 the amount of distributions **[he]** received. Any person who was an
19 affiliate that controlled the member insurer at the time the
20 distributions were declared, shall be liable up to the amount of
21 distributions **[he]** which would have been received if they had been
22 paid immediately. If two or more persons are liable with respect to
23 the same distributions, they shall be jointly and severally liable.

24 (4) The maximum amount recoverable under this subsection
25 shall be the amount in excess of all other available assets of the
26 insolvent insurer needed to pay the contractual obligations of the
27 insolvent insurer.

28 (5) If any person liable under paragraph (3) of this subsection is
29 insolvent, all its affiliates that controlled it at the time the
30 distribution was paid shall be jointly and severally liable for any
31 resulting deficiency in the amount recovered from the insolvent
32 affiliate.

33 (cf: P.L.1991, c.280, s.12)

34

35 12. Section 13 of P.L.1991, c.208 (C.17B:32A-13) is amended
36 to read as follows:

37 13. The association shall be subject to examination and
38 regulation by the commissioner. The board of directors shall submit
39 to the commissioner each year, not later than 120 days after the
40 close of the association's fiscal year, a financial report in a form
41 approved by the commissioner and a report of its activities during
42 the preceding fiscal year. Upon request of a member insurer, the
43 association shall provide a copy of the report.

44 (cf: P.L.1991, c.208, s.13)

45

46 13. Section 15 of P.L.1991, c.208 (C.17B:32A-15) is amended
47 to read as follows:

1 15. a. There shall be no liability on the part of, and no cause of
2 action of any nature shall arise against, any member insurer or its
3 agents or employees, the association or its agents or employees,
4 members of the board of directors, or the commissioner or his
5 representatives, for any action or omission by them in the
6 performance of their powers and duties under **【this act】** P.L.1991,
7 c.208 (C.17B:32A-1 et seq.). This immunity shall extend to the
8 participation in any organization of one or more other state
9 associations of similar purposes and to any such organization and
10 its agents or employees.

11 b. With respect to any impairment or insolvency of a health
12 service corporation created pursuant to P.L.1985, c.236 (C.17:48E-1
13 et seq.), the association shall have no cause of action against any
14 not-for-profit or nonprofit corporation that is regulated by a law
15 governing the conduct of not-for-profit or nonprofit corporations,
16 except in the event of willful or wanton conduct, unless the not-for-
17 profit or nonprofit corporation is a provider of health care services
18 as defined in section 1 of P.L.1985, c.236 (C.17:48E-1). For
19 purposes of this subsection, "willful or wanton conduct" means a
20 course of action which shows the actual or deliberate intent to cause
21 harm.

22 (cf: P.L.1991, c.208, s.15)

23

24 14. Section 16 of P.L.1991, c.208 (C.17B:32A-16) is amended
25 to read as follows:

26 16. Upon application and notice, all proceedings in which an
27 insolvent insurer is a party or is obligated to defend a party in any
28 court in this State shall be stayed for **【120】** 180 days and any
29 additional time thereafter as may be determined by the court from
30 the date the insolvency is determined or any ancillary proceeding is
31 initiated in the State, whichever is later, to permit proper defense by
32 the association of all pending causes of action. With respect to any
33 covered claims arising from a judgment under any decision, verdict
34 or finding based on the default of the insolvent insurer or its failure
35 to defend an insured, the association either on its own behalf or on
36 behalf of the insured may apply to have the judgment, order,
37 decision, verdict or finding set aside by the court in which the
38 judgment, order, decision, verdict or finding is entered and shall be
39 permitted to defend against the claim on the merits.

40 (cf: P.L.1991, c.208, s.16)

41

42 15. Section 17 of P.L.1991, c.208 (C.17B:32A-17) is amended
43 to read as follows:

44 17. a. No person, including **【an】** a member insurer, agent or
45 affiliate of **【an】** a member insurer or insurance producer shall
46 make, publish, disseminate, circulate or place before the public or
47 cause directly or indirectly, to be made, published, disseminated,
48 circulated or placed before the public, in any newspaper, magazine

1 or other publication or in the form of a notice, circular, pamphlet,
2 letter or poster, or over any radio station or television station, or in
3 any other way, any advertisement, announcement or statement,
4 written or oral, which uses the existence of the association for the
5 purpose of sales, solicitation, or inducement to purchase any form
6 of insurance or other coverage covered by **【this act】** P.L.1991,
7 c.208 (C.17B:32A-1 et seq.). This subsection shall not apply to the
8 department or the association or to any other entity which does not
9 sell or solicit insurance or coverage by a health service corporation,
10 hospital service corporation, medical service corporation, or health
11 maintenance organization.

12 b. Within 180 days of the effective date of **【this act】** P.L.1991,
13 c.208 (C.17B:32A-1 et seq.), the association shall prepare a
14 summary document describing the general purposes and current
15 limitations of **【the act】** P.L.1991, c.208 (C.17B:32A-1 et seq.)
16 which complies with subsection c. of this section. This document
17 shall be submitted to the commissioner for approval. Sixty days
18 after receiving that approval, no member insurer may deliver a
19 policy or contract described in subsection b. of section 3 of **【this**
20 **act】** P.L.1991, c.208 (C.17B:32A-3) to a policy or contract
21 **【holder】** owner, certificate holder, or enrollee unless the document
22 is delivered to the policy or contract **【holder】** owner, certificate
23 holder, or enrollee prior to or at the time of delivery of the policy or
24 contract. The document should also be available upon request by a
25 **【policyholder】** policy or contract owner, certificate holder, or
26 enrollee. The distribution, delivery, contents or interpretation of this
27 document shall not mean that either the policy or the contract or the
28 policy or contract owner, certificate holder, or enrollee thereof
29 would be covered in the event of the impairment or insolvency of a
30 member insurer. The document shall be revised by the association
31 as amendments to the act may require. Failure to receive this
32 document does not give the **【policyholder】** policy or contract
33 **【holder】** owner, certificate holder, enrollee, or insured any greater
34 rights than those stated in **【this act】** P.L.1991, c.208 (C.17B:32A-1
35 et seq.). **【Delivery of the document required by this subsection shall**
36 **not be required however, in the case of a policy or contract**
37 **excluded from coverage under this act pursuant to subsection c. of**
38 **section 3 of this act and with respect to which notice as required by**
39 **subsection d. of this section has been given.】**

40 c. The document prepared pursuant to subsection b. of this
41 section shall contain a clear and conspicuous disclaimer on its face.
42 The commissioner shall promulgate a rule establishing the form and
43 content of the disclaimer. The disclaimer shall:

- 44 (1) state the name and address of the association and the
45 department;
- 46 (2) prominently warn the policy owner, contract owner,
47 certificate holder, or **【contract holder】** enrollee that the association

1 may not cover the policy or contract or, if coverage is available, it
2 will be subject to substantial limitations and exclusions and
3 conditioned on continued residence in this State;

4 (3) state that the member insurer and its **【insurance】** producers
5 are prohibited by law from using the existence of the association for
6 the purpose of sales, solicitation or inducement to purchase any
7 form of insurance, health service corporation coverage, hospital
8 service corporation coverage, medical service corporation coverage,
9 or health maintenance organization coverage;

10 (4) emphasize that the policy or contract owner, certificate
11 holder, or 【contract holder】 enrollee should not rely on coverage
12 under the association when selecting **【an】** a member insurer, health
13 service corporation, hospital service corporation, medical service
14 corporation, or health maintenance organization; 【and】

15 (5) state the types of policies or contracts for which guaranty
16 funds will provide coverage;

17 (6) explain rights available and procedures for filing a complaint
18 to allege a violation of any provisions of P.L.1991, c.208
19 (C.17B:32A-1 et seq.); and

20 (7) provide other information as directed by the commissioner,
21 including, but not limited to, sources for information about the
22 financial condition of member insurers provided that the
23 information is not proprietary and is subject to disclosure under
24 P.L.1963, c.73 (C.47:1A-1 et seq.).

25 d. **【No insurer or insurance producer may deliver a policy or**
26 **contract described in subsection b. of section 3 and excluded under**
27 **paragraph (1) of subsection c. of section 3 from coverage under this**
28 **act unless the insurer or insurance producer, prior to or at the time**
29 **of delivery, gives the policy or contract holder a separate written**
30 **notice which clearly and conspicuously discloses that the policy or**
31 **contract is not covered by the association. The commissioner may**
32 **by rule further specify the form and content of the notice】** A
33 member insurer shall retain evidence of compliance with subsection
34 b. of this section for so long as the policy or contract for which the
35 notice is given remains in effect.

36 (cf: P.L.1991, c.208, s.17)

37

38 16. Section 18 of P.L.1991, c.208 (C.17B:32A-18) is amended
39 to read as follows:

40 18. a. A member insurer may offset against its premium tax
41 liability, attributable to premiums written in that year, and
42 determined pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1),
43 any assessments for which a certificate of contribution has been
44 issued, pursuant to subsection h. of section 8 of **【this act】** P.L.1991,
45 c.208 (C.17B:32A-8) to the extent of 10% of the amount of those
46 assessments for each of the five calendar years following the second
47 year after the year in which those assessments were paid, except

1 that no member insurer may offset its premium tax liability by more
2 than 20% of its premium tax liability in any one year. If a member
3 insurer should cease doing business in this State, any uncredited
4 assessments may be offset against its premium tax liability for the
5 year in which it ceases to do business in this State.

6 b. **【Any sums which are acquired by member insurers as the**
7 **result of a refund from the association pursuant to subsection f. of**
8 **section 8 of this act, and which have theretofore been offset against**
9 **premium taxes as provided in subsection a. of this section, shall be**
10 **paid by those insurers to the State as the Director of the Division of**
11 **Taxation may require. The association shall notify the**
12 **commissioner and the Director of the Division of Taxation of any**
13 **refunds made】** A member insurer that is exempt from taxes
14 referenced in subsection a. of this section may recoup its
15 assessments by a surcharge on its premiums or by a surcharge on its
16 membership fees (as applicable) in a sum reasonably calculated to
17 recoup the assessments over a reasonable period of time, as
18 approved by the commissioner. Amounts recouped shall not be
19 considered premiums for any other purpose, including the
20 computation of gross premium tax, the medical loss ratio, or
21 insurance producer commission. If a member insurer collects excess
22 surcharges, the member insurer shall remit the excess amount to the
23 association, and the excess amount shall be applied to reduce future
24 assessments in the appropriate account.

25 c. Any sums which are acquired by member insurers as the
26 result of a refund from the association pursuant to subsection f. of
27 section 8 of P.L.1991, c.208 (C.17B:32A-8), and which have
28 theretofore been offset against premium taxes as provided in
29 subsection a. of this section, shall be paid by those member insurers
30 to the State as the Director of the Division of Taxation may require.
31 The association shall notify the commissioner and the Director of
32 the Division of Taxation of any refunds made.

33 d. This section shall not apply in any way to the imposition or
34 collection of, and no offset shall be permitted against, the surtax on
35 premiums authorized pursuant to section 76 of P.L.1990, c.8
36 (C.17:33B-49).

37 (cf: P.L.1991, c.208, s.18)

38
39 17. Section 19 of P.L.1991, c.208 (C.17B:32A-19) is amended
40 to read as follows:

41 19. a. The provisions of **【sections 2 through 18 of this act】**
42 P.L.1991, c.208 (C.17B:32A-1 et seq.) **【shall not apply to any**
43 **insurer which is insolvent or impaired on December 31, 1990,**
44 **except as provided in paragraph (2) of subsection b. of section 3 of**
45 **this act】** prior to the effective date of P.L. _____, c. _____ (C. _____)
46 (pending before the Legislature as this bill) shall apply to all
47 matters relating to any impaired insurer or insolvent insurer as

1 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which
2 the association first became obligated under section 7 of P.L.1991,
3 c.208 (C.17B:32A-7) in effect prior to the effective date of P.L. ,
4 c. (C.) (pending before the Legislature as this bill).

5 b. The provisions of P.L.1991, c.208 (C.17B:32A-1 et seq.) in
6 effect on and after the effective date of P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall apply to all
8 matters relating to any impaired insurer or insolvent insurer as
9 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which
10 the association first became obligated under section 7 of P.L.1991,
11 c.208 (C.17B:32A-7) on or after the effective date of P.L. , c.
12 (C.) (pending before the Legislature as this bill).
13 (cf: P.L.1991, c.208, s.19)

14
15
16
17
18
19

18. This act shall take effect immediately.

20 Updates “New Jersey Life and Health Insurance Guaranty
21 Association Act” to current standards of National Association of
22 Insurance Commissioners.

SENATE, No. 2422

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 9, 2022

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Updates “New Jersey Life and Health Insurance Guaranty Association Act” to current standards of National Association of Insurance Commissioners.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the “New Jersey Life and Health Insurance
2 Guaranty Association Act” and amending P.L.1991, c.208.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1991, c.208 (C.17B:32A-2) is amended to
8 read as follows:

9 2. a. The purpose of **[this act]** P.L.1991, c.208 (C.17B:32A-1
10 et seq.) is to protect, subject to certain limitations, those persons
11 specified in subsection a. of section 3 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-1 et seq.) from hardship because of the impairment or
13 insolvency of any member insurer that issued the life **[and]**, health
14 **[insurance policies]**, and annuity policies, plans or contracts
15 specified in subsection b. of section 3 of **[this act]** P.L.1991, c.208
16 (C.17B:32A-1 et seq.).

17 b. To provide this protection, an association of member
18 insurers is created to pay benefits and to continue coverages, as
19 limited by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), and
20 members of the association are subject to assessment to provide funds
21 to carry out the purposes of **[this act]** P.L.1991, c.208 (C.17B:32A-
22 1 et seq.).

23 (cf: P.L.1991, c.208, s.2)

24

25 2. Section 3 of P.L.1991, c.208 (C.17B:32A-3) is amended to
26 read as follows:

27 3. a. **[This act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall
28 provide coverage, for the policies and contracts specified in
29 subsection b. of this section, to:

30 (1) persons who, regardless of where they reside (except for
31 nonresident certificate holders under group policies or contracts), are
32 the beneficiaries, assignees or payees, including health care providers
33 rendering services covered under health insurance policies or
34 certificates, of the persons covered under paragraph (2) of this
35 subsection; and

36 (2) persons who are owners of or certificate holders or enrollees
37 under those policies or contracts **[, or in the case of]** (other than
38 unallocated annuity contracts, [to the persons who are the contract
39 holders and] and structured settlement annuities) and in each case
40 who:

41 (a) are residents, or

42 (b) are not residents, but only if:

43 (i) the member insurers which issued the policies or contracts are
44 domiciled in this State;

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

Matter underlined thus is new matter.

1 (ii) those member insurers, health service corporations, hospital
2 service corporations, medical service corporations, or health
3 maintenance organizations never held a license or certificate of
4 authority in the states in which those persons reside;

5 (iii) those states have associations and coverage provisions with
6 respect to residency similar to the association created by **[this act]**
7 P.L.1991, c.208 (C.17B:32A-1 et seq.); and

8 (iv) those persons are not eligible for coverage by those
9 associations.

10 (3) For unallocated annuity contracts specified in subsection b. of
11 this section, paragraphs (1) and (2) of this subsection shall not apply,
12 and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided
13 in paragraphs (5) and (6) of this subsection) provide coverage to
14 persons who are the owners of the unallocated annuity contracts:

15 (a) if the contracts are issued to or in connection with a specific
16 benefit plan whose plan sponsor has its principal place of business in
17 this State; and

18 (b) issued to or in connection with government lotteries if the
19 owners are residents.

20 (4) For structured settlement annuities specified in subsection b.
21 of this section, paragraphs (1) and (2) of this subsection shall not
22 apply, and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as
23 provided in paragraphs (5) and (6) of this subsection) provide
24 coverage to a person who is a payee under a structured settlement
25 annuity (or beneficiary of a payee if the payee is deceased) if the
26 payee:

27 (a) is a resident, regardless of where the contract owner resides;
28 or

29 (b) is not a resident, but only under both of the following
30 conditions:

31 (i) the contract owner of the structured settlement annuity is a
32 resident or is not a resident but the insurer that issued the settlement
33 annuity is domiciled in New Jersey and the state in which the contract
34 owner resides has an association similar to the association created by
35 P.L.1991, c.208 (C.17B:32A-1 et seq.); and

36 (ii) the payee (or beneficiary) and the contract owner are not
37 eligible for coverage by the association of the state in which the
38 payee or contract owner resides.

39 (5) P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
40 coverage to a person:

41 (a) who is a payee (or beneficiary) of a contract owner resident
42 of this State, if the payee (or beneficiary) is afforded any coverage
43 by the association of another state;

44 (b) covered under paragraph (3) of this subsection, if any
45 coverage is provided by the association of another state to the person;
46 or

47 (c) who acquires rights to receive payments through a structured
48 settlement factoring transaction as defined in section 5891 of the

1 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless
2 of whether the transaction occurred before or after that section
3 became effective.

4 (6) P.L.1991, c.208 (C.17B:32A-1 et seq.) is intended to provide
5 coverage to a person who is a resident of this State and, in special
6 circumstances, to a nonresident. In order to avoid duplicate coverage,
7 if a person who would otherwise receive coverage under P.L.1991,
8 c.208 (C.17B:32A-1 et seq.) is provided coverage under the law of
9 another state, the person shall not be provided coverage under
10 P.L.1991, c.208 (C.17B:32A-1 et seq.). In determining the
11 application of the provisions of this paragraph in situations where a
12 person could be covered by the association of more than one state,
13 whether as an owner, payee, enrollee, beneficiary or assignee,
14 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be construed in
15 conjunction with other state laws to result in coverage by only one
16 association.

17 b. **【This act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall provide
18 coverage to the persons specified in subsection a. of this section for
19 policies or contracts of:

20 (1) direct, non-group life insurance, health insurance (which for
21 the purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.) includes
22 health service corporation contracts, hospital service corporation
23 contracts, medical service corporation contracts, and health
24 maintenance organization subscriber contracts and certificates), or
25 **【annuity】** annuities and supplemental policies or contracts, for
26 certificates under direct group life insurance, health insurance,
27 **【annuity】** annuities and supplemental policies and contracts, for
28 individual and group long-term care insurance policies and contracts,
29 and for unallocated annuity contracts, issued by member insurers,
30 except as limited by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
31 seq.); and

32 (2) policies or contracts issued by medical service corporations
33 declared to be insolvent or impaired by a court of competent
34 jurisdiction on or after September 1, 1987, but prior to the effective
35 date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), except as
36 otherwise limited by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
37 seq.).

38 c. **【This act】** Except as otherwise provided in subsection d. of this
39 section, P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
40 coverage for:

41 (1) any portion of a policy or contract not guaranteed by the
42 member insurer, or under which the risk is borne by the policy or
43 contract **【holder】** owner;

44 (2) any policy or contract of reinsurance, unless assumption
45 certificates have been issued;

46 (3) any portion of a policy or contract to the extent that the rate
47 of interest on which it is based:

- 1 (a) averaged over the four-year period prior to the date on which
2 the association becomes obligated with respect to that policy or
3 contract, exceeds the lesser of:
- 4 (i) the rate of interest determined by subtracting three percentage
5 points from Moody's Corporate Bond Yield Average averaged for
6 that same four-year period, or for such lesser period if the policy or
7 contract was issued less than four years before the association
8 became obligated, or
- 9 (ii) the rate of interest specified in the standard valuation law, or
10 the rules of this State for determining the minimum standard for the
11 valuation of policies or contracts issued during the year of
12 insolvency; and
- 13 (b) on and after the date on which the association becomes
14 obligated with respect to that policy or contract, exceeds the rate of
15 interest determined by subtracting four percentage points from
16 Moody's Corporate Bond Yield Average as most recently available;
17 except that the limitation of this paragraph shall not preclude the
18 association from providing more extensive coverage if it is
19 proceeding under the authority of section 7 of **[this act]** P.L.1991,
20 c.208 (C.17B:32A-7);
- 21 (4) any plan or program of an employer, association or similar
22 entity to provide life, health, or annuity benefits to its employees or
23 members to the extent that such plan or program is self-funded or
24 uninsured, including, but not limited to, benefits payable by an
25 employer, association or similar entity under:
- 26 (a) a Multiple Employer Welfare Arrangement as defined in the
27 Employee Retirement Income Security Act of 1974 (29 U.S.C.
28 s.1002);
- 29 (b) a minimum premium group insurance plan;
- 30 (c) a stop-loss group insurance plan; or
- 31 (d) an administrative services only contract;
- 32 (5) any portion of a policy or contract to the extent that it provides
33 dividends or experience rating credits, or provides that any fees or
34 allowances be paid to any person, including the **[holder]** owner of
35 the policy or contract, in connection with the service to or
36 administration of that policy or contract;
- 37 (6) any policy or contract issued in this State by a member insurer
38 at a time when it was not licensed or did not have a certificate of
39 authority to issue that policy or contract in this State;
- 40 (7) any unallocated annuity contract issued to an employee benefit
41 plan covered by the Pension Benefit Guaranty Corporation and
42 whose benefits will be paid under such system; **[and]**
- 43 (8) any portion of any unallocated annuity contract which is not
44 issued to or in connection with a specific plan providing benefits to
45 employees or an association of natural persons;
- 46 (9) a portion of a policy or contract to the extent it provides for
47 interest or other changes in value to be determined by the use of an
48 index or other external reference stated in the policy or contract, but

1 which has not been credited to the policy or contract, or as to which
2 the policy or contract owner's rights are subject to forfeiture, as of
3 the date the member insurer becomes an impaired or insolvent insurer
4 under P.L.1991, c.208 (C.17B:32A-1 et seq.), whichever is earlier. If
5 a policy or contract's interest or changes in value are credited less
6 frequently than annually, then for purposes of determining the values
7 that have been credited and are not subject to forfeiture under this
8 paragraph, the interest or change in value determined by using the
9 procedures defined in the policy or contract shall be credited as if the
10 contractual date of crediting interest or changing values was the date
11 of impairment or insolvency, whichever is earlier, and shall not be
12 subject to forfeiture;

13 (10) a policy or contract providing any hospital, medical,
14 prescription drug, or other health care benefits pursuant to Medicare
15 Parts C or D or the Medicaid program, 42 U.S.C. ss.1396 et seq.,
16 including the Children's Health Insurance Program (CHIP) which
17 provides health coverage to eligible children, either through
18 Medicaid or separate CHIP programs, or any regulations issued
19 pursuant thereto, or the "Family Health Care Coverage Act,"
20 P.L.2005, c.156 (C.30:40J-8 et seq.), or

21 (11) structured settlement annuity benefits to which a payee (or
22 beneficiary) has transferred rights in a structured settlement factoring
23 transaction as defined pursuant to section 5891 of the federal Internal
24 Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless of whether the
25 transaction occurred before or after that section became effective.

26 d. The exclusion from coverage referenced in paragraph (3) of
27 subsection c. of this section shall not apply to any portion of a policy
28 or contract, including a rider, that provides a long-term care or any
29 other health insurance benefits.

30 e. The benefits for which the association may become liable
31 shall in no event exceed the lesser of:

32 (1) the contractual obligations for which the member insurer is
33 liable or would have been liable if it were not an impaired or
34 insolvent insurer; or

35 (2) with respect to [any] one [insured individual] life,
36 regardless of the number of policies or contracts:

37 (a) \$500,000 in life insurance death benefits, but not more than
38 \$100,000 in net cash surrender and net cash withdrawal values for
39 life insurance;

40 (b) \$500,000 in present value annuity benefits, including net cash
41 surrender and net cash withdrawal values, but not more than
42 \$100,000 in net cash surrender and net cash withdrawal values for
43 annuity benefits; provided, however, that in no event shall the
44 association be liable to expend more than \$500,000 in the aggregate
45 with respect to any one individual under this paragraph (2); or

46 (3) with respect to any one unallocated annuity contract,
47 \$2,000,000 in benefits; or

1 (4) with respect to any one group, blanket, or individual accident
2 or health insurance or **【**group, blanket or individual accident or health
3 insurance policy, unlimited benefits**】** or health benefit plan, policy or
4 contract:

5 (a) \$500,000 for coverages not defined as disability income
6 insurance, health benefit plans, or long-term care insurance,
7 including any net cash surrender and net cash withdrawal values;

8 (b) \$500,000 for disability income insurance and long-term care
9 insurance; provided, however, that in no event shall the association
10 be liable to expend more than \$500,000 in the aggregate with respect
11 to any one individual under this paragraph; and

12 (c) \$500,000 for health benefit plans; provided, however, that in
13 no event shall the association be liable to expend more than \$500,000
14 in the aggregate with respect to any one individual under this
15 paragraph;

16 (5) with respect to each individual participating in a governmental
17 retirement benefit plan established under sections 401, 403(b), or 457
18 of the U.S. Internal Revenue Code, 26 U.S.C. ss.401, 403(b), and
19 457, covered by an unallocated annuity contract or the beneficiaries
20 of each such individual if deceased, in the aggregate, \$500,000 in
21 present value annuity benefits, including net cash surrender and net
22 cash withdrawal values; and

23 (6) with respect to each payee of a structured settlement annuity
24 (or beneficiary or beneficiaries of the payee if deceased), \$500,000
25 in present value annuity benefits, in the aggregate, including net cash
26 surrender and net cash withdrawal values, if any.

27 (7) The limitations set forth in this subsection are limitations on
28 the benefits for which the association is obligated before taking into
29 account either its subrogation and assignment rights or the extent to
30 which those benefits could be provided out of the assets of the
31 impaired or insolvent insurer attributable to covered policies. The
32 costs of the obligation of the association under P.L.1991, c.208
33 (C.17B:32A-1 et seq.) may be met by the use of assets attributable to
34 covered policies or reimbursed to the association pursuant to its
35 subrogation and assignment rights.

36 (8) For purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.),
37 benefits provided by a long-term care rider to a life insurance policy
38 or annuity contract shall be considered the same type of benefits as
39 the base life insurance policy or annuity contract to which it relates.

40 (9) Dollar amounts allotted by the association under this section
41 shall increase or decrease based upon changes in the health care costs
42 component of the consumer price index from January 1, 2022, to the
43 date on which the member insurer becomes an insolvent insurer.

44 **【e.】** f. A provider of health care services, in order to receive
45 payment directly from the association upon a claim of the provider
46 against an insured or enrollee, shall agree to forgive the insured of
47 20% of the obligation which would otherwise be paid by the member
48 insurer had it not been insolvent. The obligations of solvent member

1 insurers to pay all or part of the covered claim are not diminished by
2 the forgiveness provided in this subsection. The association is not
3 bound by an assignment of benefits executed with respect to the
4 coverage provided by the insolvent insurer. The association may
5 aggregate all claims owed health care providers when negotiating
6 direct payment of claims of all covered individuals.
7 (cf: P.L.1991, c.208, s.3)

8
9 3. Section 4 of P.L.1991, c.208 (C.17B:32A-4) is amended to
10 read as follows:

11 4. As used in **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):

12 "Account" means either of the two accounts created under
13 subsection b. of section 5 of **[this act]** P.L.1991, c.208 (C.17B:32A-
14 5).

15 "Association" means the New Jersey Life and Health Insurance
16 Guaranty Association created in subsection a. of section 5 of **[this**
17 **act]** P.L.1991, c.208 (C.17B:32A-5).

18 "Benefit plan" means the benefit plan of a specific employee,
19 union or association of natural persons.

20 "Called assessment" or "called" when used in the context of
21 assessments means that a notice has been issued by the association to
22 member insurers requiring that an authorized assessment be paid
23 within the timeframe set forth within the notice. An authorized
24 assessment becomes a called assessment when notice is mailed by
25 the association to member insurers.

26 "Commissioner" means the Commissioner of Banking and
27 Insurance.

28 "Contractual obligation" means any obligation under a policy or
29 contract or certificate under a group policy or contract, or portion
30 thereof, for which coverage is provided under section 3 of **[this act]**
31 P.L.1991, c.208 (C.17B:32A-3), but does not include unearned
32 premium under a health insurance policy or contract.

33 "Covered policy" or "covered contract" means any policy or
34 contract within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-
35 1 et seq.) as provided by section 3 of **[this act]** P.L.1991, c.208
36 (C.17B:32A-3).

37 "Department" means the Department of Banking and Insurance.

38 "Health benefit plan" means any hospital or medical expense
39 policy or certificate, health service corporation contract, hospital
40 service corporation contract, medical service corporation contract,
41 health maintenance organization subscriber contract, or any other
42 similar health contract. "Health benefit plan" does not include
43 accident-only insurance; credit insurance; dental-only insurance;
44 vision-only insurance; Medicare Supplement income; benefits for
45 long-term care, home health care, community-based care, or any
46 combination thereof; liability insurance, including general liability
47 insurance, or coverage issued as a supplement to liability insurance;

1 disability income insurance; coverage for on-site medical clinics; or
2 specified disease, hospital, confinement indemnity, or limited benefit
3 health insurance if the types of coverage do not provide coordination
4 of benefits and are provided under separate policies or certificates.

5 "Impaired insurer" means a member insurer which, after the
6 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.):
7 (1) is determined by the commissioner to be potentially unable to
8 fulfill its contractual obligations; or (2) is placed under an order of
9 receivership, rehabilitation or conservation by a court of competent
10 jurisdiction.

11 "Insolvent insurer" means a member insurer which, after the
12 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), is
13 placed under an order of liquidation by a court of competent
14 jurisdiction with a finding of insolvency.

15 "Member insurer" means any insurer, health service corporation,
16 hospital service corporation, medical service corporation, or health
17 maintenance organization licensed in this State or which holds a
18 certificate of authority to transact any kind of insurance, health
19 service corporation business, hospital service corporation business,
20 medical service corporation business, or health maintenance
21 organization business in this State for which coverage is provided
22 under section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3), and
23 includes any insurer, health service corporation, hospital service
24 corporation, medical service corporation, or health maintenance
25 organization whose license or certificate of authority in this State
26 may have been suspended, revoked, not renewed or voluntarily
27 withdrawn, but does not include:

28 (1) A dental service corporation established pursuant to the
29 provisions of P.L.1968, c.305 (C.17:48C-1 et seq.);

30 (2) A dental plan organization established pursuant to the
31 provisions of P.L.1979, c.478 (C.17:48D-1 et seq.);

32 (3) **【A health maintenance organization established pursuant to**
33 **the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.);】** (Deleted by
34 amendment, P.L. , c.) (pending before the Legislature as this
35 bill);

36 (4) A fraternal benefit society established pursuant to the
37 provisions of P.L.1959, c.167 (C.17:44A-1 et seq.);

38 (5) A mandatory state pooling plan;

39 (6) A mutual assessment company or any entity that operates on
40 an assessment basis to the extent of the assessment liability of its
41 members;

42 (7) An insurance exchange; **【or】**

43 (8) A licensed organized delivery system licensed pursuant to
44 P.L.1999, c.409 (C.17:48H-1 et seq.);

45 (9) A captive insurer, established pursuant to P.L.2011, c.25
46 (C.17:47B-1 et seq.); or

47 **【(8)】** (10) An entity similar to any of the above.

1 "Moody's Corporate Bond Yield Average" means the Monthly
2 Average Corporates as published by Moody's Investors Service, Inc.,
3 or any successor thereto.

4 "Owner" of a policy or contract and "policyholder," "policy
5 owner," and "contract owner" means the person who is identified as
6 the legal owner under the terms of the policy or contract or who is
7 otherwise vested with legal title to the policy or contract through a
8 valid assignment completed in accordance with the terms of the
9 policy or contract and properly recorded as the owner of the books of
10 the member insurer. The terms owner, contract owner, policyholder,
11 and policy owner do not include persons with a mere beneficial
12 interest in a policy or contract.

13 "Person" means an individual or natural person, corporation,
14 partnership, association or voluntary organization.

15 "Plan sponsor" means:

16 (1) the employer in the case of a benefit plan established or
17 maintained by a single employer;

18 (2) the employee organization in the case of a benefit plan
19 established or maintained by an employee organization; or

20 (3) in a case of a benefit plan established or maintained by two or
21 more employers or jointly by one or more employers and one or more
22 employee organizations, the association, committee, joint board of
23 trustees, or other similar group of representatives of the parties who
24 establish or maintain the benefit plan.

25 "Premiums" means amounts or considerations received in any
26 calendar year on covered policies or contracts less premiums,
27 considerations and deposits returned thereon, and less dividends and
28 experience credits thereon. "Premiums" shall not include any
29 amounts or considerations received for any policies or contracts or
30 for the portions of any policies or contracts for which coverage is not
31 provided under subsection b. of section 3 of **[this act]** P.L.1991,
32 c.208 (C.17B:32A-3) except that assessable premium shall not be
33 reduced as the result of the application of: paragraph (3) of
34 subsection c. of section 3 relating to interest limitations; or paragraph
35 (2) of subsection d. of section 3 relating to limitations with respect to
36 any one insured or enrolled individual. "Premiums" shall not include
37 any premiums in excess of \$2,000,000 per contract on any
38 unallocated annuity contract.

39 "Resident" means a person who resides in this State at the time a
40 member insurer is an impaired insurer or insolvent insurer and to
41 whom a contractual obligation is owed. For the purposes of **[this**
42 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), a person may be a
43 resident of only one state, which in the case of a person other than a
44 natural person shall be its principal place of business. A citizen of the
45 United States that is a resident of a foreign country or of a United
46 States possession, territory, or protectorate that does not have an
47 association similar to the association created by P.L.1991, c.208

1 (C.17B:32A-1 et seq.) shall be deemed a resident of the state of
2 domicile of the member insurer that issued the policies or contracts.

3 “State” means a state, the District of Columbia, Puerto Rico, and
4 a United States possession, territory, or protectorate.

5 “Structured settlement annuity” means an annuity purchased in
6 order to fund periodic payments for a plaintiff or other claimant in
7 payment for or with respect to personal injury suffered by the
8 plaintiff or other claimant.

9 "Supplemental contract" means an agreement entered into for the
10 distribution of policy or contract proceeds.

11 "Unallocated annuity contract" means: (1) an annuity contract or
12 group annuity certificate which is not issued to and owned by an
13 individual, except to the extent of any annuity benefits guaranteed to
14 an individual by an insurer under that contract or certificate; or (2)
15 any unallocated life insurance or health insurance funding agreement,
16 where insurance certificates or contracts are not issued to and owned
17 by individuals, except to the extent of any life insurance or health
18 insurance benefits guaranteed to an individual by an insurer under
19 such funding agreement.

20 (cf: P.L.1991, c.208, s.4)

21

22 4. Section 5 of P.L.1991, c.208 (C.17B:32A-5) is amended to
23 read as follows:

24 5. a. There is created a nonprofit legal entity to be known as the
25 New Jersey Life and Health Insurance Guaranty Association. All
26 member insurers shall be and remain members of the association as
27 a condition of their authority or license to transact insurance, health
28 service corporation business, hospital service corporation business,
29 medical service corporation business, or health maintenance
30 organization business in this State. Any member insurer shall remain
31 a member insurer for four years after it ceases to hold a certificate of
32 authority or license. The association shall perform its functions under
33 the plan of operation established and approved pursuant to section 9
34 of **【this act】** P.L.1991, c.208 (C.17B:32A-9) and shall exercise its
35 powers through the board of directors established under section 6 of
36 **【this act】** P.L.1991, c.208 (C.17B:32A-6). The association shall be
37 under the immediate supervision of the commissioner and shall be
38 subject to the applicable provisions of the insurance laws of this
39 State. Meetings or records of the association may be opened to the
40 public upon majority vote of the board of directors of the association.

41 b. For purposes of administration and assessment the association
42 shall maintain two accounts:

43 (1) The life insurance and annuity account which shall include the
44 following subaccounts:

45 (a) life insurance subaccount;

46 (b) annuity subaccount; and

47 (c) unallocated annuity subaccount.

1 (2) The health **【insurance】** account.

2 (cf: P.L.1991, c.208, s.5)

3

4 5. Section 6 of P.L.1991, c.208 (C.17B:32A-6) is amended to
5 read as follows:

6 6. a. There shall be a board of directors of the association which
7 shall consist of not less than **【five】** seven nor more than **【nine】**
8 eleven member insurers serving terms as established in the plan of
9 operation. The members of the board shall be selected by member
10 insurers subject to the approval of the commissioner. Vacancies on
11 the board shall be filled for the remaining period of the term by a
12 majority vote of the remaining board members, subject to the
13 approval of the commissioner. To select the initial board of directors,
14 and initially organize the association, the commissioner shall give
15 notice to all member insurers of the time and place of the
16 organizational meeting. In determining voting rights at the
17 organizational meeting each member insurer shall be entitled to one
18 vote in person or by proxy. If the board of directors is not selected
19 within 60 days after notice of the organizational meeting, the
20 commissioner may appoint the initial members.

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

24 c. Members of the board may be reimbursed from the assets of
25 the association for reasonable expenses incurred by them as members
26 of the board of directors, but members of the board shall not
27 otherwise be compensated by the association for their services.

28 (cf: P.L.1991, c.208, s.6)

29

30 6. Section 7 of P.L.1991, c.208 (C.17B:32A-7) is amended to
31 read as follows:

32 7. a. If a member insurer is an impaired **【domestic】** insurer, the
33 association may, in its discretion, and subject to any conditions
34 imposed by the association that do not unreasonably impair the
35 contractual obligations of the impaired insurer, that are approved by
36 the commissioner**【**, and that are, except in cases of court ordered
37 receivership, conservation or rehabilitation, also approved by the
38 impaired insurer**】**:

39 (1) guaranty, assume, reissue, or reinsure, or cause to be
40 guaranteed, assumed, reissued, or reinsured, any or all of the policies
41 or contracts of the impaired insurer;

42 (2) provide such monies, pledges, notes, guarantees, or other
43 means as are proper to effectuate the provisions of paragraph (1) of
44 this subsection and assure payment of the contractual obligations of
45 the impaired insurer pending action under paragraph (1); or

46 (3) loan money to the impaired insurer.

1 b. [(1) If a member insurer is an impaired insurer, whether
2 domestic, foreign or alien, and the insurer is not paying claims in a
3 timely manner, then subject to the preconditions specified in
4 paragraph (2) of this subsection, the association shall, in its
5 discretion, either:

6 (a) take any of the actions specified in subsection a. of this section,
7 subject to the conditions therein; or

8 (b) provide substitute benefits in lieu of the contractual obligations
9 of the impaired insurer solely for health insurance claims, periodic
10 annuity benefit payments, death benefits, supplemental benefits, and
11 cash withdrawals for policy or contract owners who petition therefor
12 under claims of emergency or hardship in accordance with standards
13 proposed by the association and approved by the commissioner.

14 (2) The association shall be subject to the requirements of
15 paragraph (1) of this subsection only if:

16 (a) the laws of the impaired insurer's state or country of domicile
17 provide that, until all payments of, or on account of, the impaired
18 insurer's contractual obligations by all guaranty associations, along
19 with all expenses thereof and interest on all such payments and
20 expenses, shall have been repaid to the guaranty associations or a
21 plan of repayment by the impaired insurer shall have been approved
22 by the guaranty associations,

23 (i) the delinquency proceeding shall not be dismissed,

24 (ii) neither the impaired insurer nor its assets shall be returned to
25 the control of its shareholders or private management, and

26 (iii) it shall not be permitted to solicit or accept new business or
27 have any suspended or revoked license restored; and

28 (b) (i) in the case of a domestic insurer, it has been placed under
29 an order of receivership or rehabilitation by a court of competent
30 jurisdiction in this State, or

31 (ii) in the case of a foreign or alien insurer, it has been prohibited
32 from soliciting or accepting new contracts in this State, except as
33 approved by the commissioner and as part of a plan of rehabilitation
34 approved by a court of competent jurisdiction.

35 (3) (a) The limitations of paragraphs (3) and (4) of subsection c.
36 of section 3 of this act shall not preclude the association from
37 providing more extensive coverage or guarantees, if it is proceeding
38 under the authority of this section and if that additional coverage is
39 an essential element in allowing a rehabilitation plan to succeed as
40 determined by the commissioner and a court of competent
41 jurisdiction.

42 (b) The commissioner and the association shall utilize the
43 authority of this section if a reasonable prospect exists that the
44 ultimate liabilities to be paid by the association and its member
45 insurers will be reduced as compared to the present liabilities
46 incurred if the association were to proceed under paragraph (2) of
47 subsection d. of section 3 of this act.

1 (c) In proceeding under paragraph (1) of subsection b. of this
2 section, without limitation on any authority or right of the association
3 under this act or any right of contract, the association may enter into
4 agreements with other guaranty associations to secure coordination
5 between associations and performance by those associations with
6 respect to policy or contract holders covered by those associations
7 equivalent to that provided to individuals covered by this act.

8 (d) In proceeding under paragraph (1) of subsection b. of this
9 section, any funds actually expended by a member insurer for
10 benefits received by a person covered by this act, which were subject
11 to a plan of rehabilitation approved by the commissioner and a court
12 of competent jurisdiction, shall qualify as an assessment under
13 section 8 of this act after a final accounting.

14 (e) When the association is proceeding under paragraph (1) of
15 subsection b. of this section, the court shall authorize the
16 establishment of liens upon policy and contract holder cash surrender
17 values and cash withdrawal values limiting the ability of policy and
18 contract holders to withdraw deposits, surrender their policies or
19 contracts and receive the net cash surrender values and net cash
20 withdrawal values, for a term of not less than three nor more than
21 five years. The court, in establishing liens upon cash surrender
22 values or cash withdrawal values, shall approve such liens upon the
23 motion of the receiver as are necessary to enable the impaired insurer
24 to meet its death and disability claims and fund the necessary
25 operating expenses associated with its receivership to the greatest
26 extent possible with the available assets of the impaired insurer
27 within the time period covered by rehabilitation plan. The standard
28 to be applied by the court with respect to preferential treatment is that
29 all options offered to policy and contract holders must represent the
30 same pro rata claim on the general account assets of the impaired
31 insurer and be actuarially equivalent in present value terms at the
32 time they are approved.】 (Deleted by amendment, P.L. _____, c. _____)
33 (pending before the Legislature as this bill):

34 c. If a member insurer is an insolvent insurer, the association
35 shall, in its discretion, either:

36 (1) (a) guaranty, assume, reissue, or reinsure, or cause to be
37 guaranteed, assumed, reissued, or reinsured, the policies or contracts
38 of the insolvent insurer; or

39 (b) assure payment of the contractual obligations of the insolvent
40 insurer; and

41 (c) provide those monies, pledges, guarantees, or other means as
42 are reasonably necessary to discharge those obligations; or

43 (2) with respect only to **【life and health insurance】** policies or
44 contracts, provide benefits and coverages in accordance with
45 subsection d. of this section.

46 d. When proceeding under **【subparagraph (b) of paragraph (1)**
47 **of subsection b. or】** paragraph (2) of subsection c. of this section, the

1 association shall, with respect only to **【life and health insurance】**
2 policies or contracts:

3 (1) assure payment of benefits **【for premiums identical to the**
4 **premiums and benefits, except for terms of conversion and**
5 **renewability,】** that would have been payable under the policies or
6 contracts of the impaired or insolvent insurer, for claims incurred:

7 (a) with respect to group policies or contracts, not later than the
8 earlier of the next renewal date under those policies or contracts or
9 45 days, but in no event less than 30 days, after the date on which the
10 association becomes obligated with respect to those policies or
11 contracts;

12 (b) with respect to individual policies or contracts, not later than
13 the earlier of the next renewal date, if any, under those policies or
14 contracts or one year, but in no event less than 30 days, from the date
15 on which the association becomes obligated with respect to those
16 policies or contracts;

17 (2) make a diligent effort to provide all known insureds, enrollees,
18 annuitants, or group **【policyholders】** policy or contract owners with
19 respect to group policies or contracts, 30 days' notice of the
20 termination of the benefits provided; and

21 (3) with respect to individual policies or contracts, and with
22 respect to individuals formerly an insured, enrollee, or annuitant
23 under group policies or contracts who are not eligible for replacement
24 group coverage, make available to each known insured, enrollee,
25 annuitant, or policy or contract owner of an individual policy or
26 contract if other than the insured, enrollee, or annuitant substitute
27 coverage on an individual basis in accordance with the provisions of
28 paragraph (4) of this subsection, if the insured, enrollee, or annuitant
29 had a right under law or the terminated policy **【or】**, contract or
30 annuity to convert coverage to individual coverage or to continue an
31 individual policy **【or】**, contract, or annuity in force until a specified
32 age or for a specified time, during which the member insurer, health
33 service corporation, hospital service corporation, medical service
34 corporation, or health maintenance organization had no right
35 unilaterally to make changes in any provision of the policy **【or】**,
36 contract, or annuity or had a right only to make changes in premium
37 by class.

38 (4) (a) In providing the substitute coverage required by paragraph
39 (3), the association may offer either to reissue the terminated
40 coverage or to issue an alternative policy or contract at actuarially
41 justified rates.

42 (b) Alternative or reissued policies or contracts shall be offered
43 without requiring evidence of insurability, and shall not provide for
44 any waiting period or exclusion that would not have applied under
45 the terminated policy or contract.

46 (c) The association may reinsure any alternative or reissued policy
47 or contract.

1 (5) (a) Alternative policies or contracts adopted by the association
2 shall be subject to the approval of the commissioner.

3 (b) Alternative policies or contracts shall contain at least the
4 minimum statutory provisions required in this State and provide
5 benefits that shall not be unreasonable in relation to the premium
6 charged under reasonable actuarial assumptions. The association
7 shall set the premium in accordance with a table of rates which it
8 shall adopt. The premium shall reflect the amount of insurance or
9 coverage to be provided and the age and class of risk of each insured
10 or enrollee.

11 (c) Any alternative policy or contract issued by the association
12 shall provide coverage of a type similar to that of the policy or
13 contract issued by the impaired or insolvent insurer, as determined
14 by the association.

15 (6) If the association elects to reissue terminated coverage at a
16 premium rate different from that charged under the terminated policy
17 or contract, the premium shall be actuarially justified and set by the
18 association in accordance with the amount of insurance or coverage
19 provided and the age and class of risk, subject to approval of the
20 commissioner.

21 (7) The association's obligations with respect to coverage under
22 any policy or contract of the impaired or insolvent insurer or under
23 any reissued or alternative policy or contract shall cease on the date
24 that coverage, policy or contract is replaced by another similar
25 coverage, policy or contract by the **【policyholder】** policy or contract
26 owner, the enrollee, the association, or the insured.

27 e. When proceeding under **【subparagraph (b) of paragraph (1)**
28 **of subsection b. or】** subsection c. of this section with respect to any
29 policy or contract carrying guaranteed minimum interest rates, the
30 association shall assure the payment or crediting of a rate of interest
31 at least equal to that specified in paragraph (3) of subsection c. of
32 section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3).

33 f. Nonpayment of premiums within 31 days after the date
34 required, after effective notice shall have been given of the terms of
35 any guaranteed, assumed, alternative or reissued policy or contract or
36 substitute coverage, shall terminate the association's obligations
37 under that policy, contract or coverage under **【this act】** P.L.1991,
38 c.208 (C.17B:32A-1 et seq.) with respect to that policy, contract or
39 coverage, except with respect to any claims incurred or any net cash
40 surrender value which may be due in accordance with the provisions
41 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

42 g. Premiums due for coverage after entry of an order of
43 receivership or liquidation of any insolvent insurer shall belong to,
44 and be payable at the direction of, the association.

45 h. The protection provided by **【this act】** P.L.1991, c.208
46 (C.17B:32A-1 et seq.) shall not apply if any guaranty protection is
47 provided to residents of this State by the law of the domiciliary state

1 or jurisdiction of the impaired or insolvent insurer other than this
2 State.

3 i. In carrying out its duties under subsections b. and c. of this
4 section, the association may, subject to approval by the court:

5 (1) impose reasonable and necessary policy or contract liens in
6 connection with any guaranty, assumption or reinsurance agreement,
7 if the association finds that the amounts which can be assessed under
8 this act are less than the amounts needed to assure full and prompt
9 performance of the association's duties under **【this act】** P.L.1991,
10 c.208 (C.17B:32A-1 et seq.), or that the economic or financial
11 conditions as they affect member insurers are sufficiently adverse to
12 render the imposition of those policy or contract liens, to be in the
13 public interest; or

14 (2) impose temporary moratoriums or liens on payments of cash
15 values and policy loans, or any other right to withdraw funds held in
16 conjunction with policies or contracts, in addition to any contractual
17 provisions for deferral of cash or policy loan value.

18 j. If the association fails to act within a reasonable period of
19 time as provided in **【subparagraph (b) of paragraph (1) of subsection**
20 **b. and】** subsections b. and c. **【and d.】** of this section, the
21 commissioner shall have the powers and duties of the association
22 provided by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) with
23 respect to impaired or insolvent insurers.

24 k. The association may render assistance and advice to the
25 commissioner concerning the receivership, conservation,
26 rehabilitation, liquidation, payment of claims, continuance of
27 coverage, or the performance of other contractual obligations of any
28 impaired or insolvent insurer.

29 l. The association shall have standing to appear before any court
30 in this State with jurisdiction over an impaired or insolvent insurer
31 with respect to which the association is or may become obligated
32 under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.). That
33 standing shall extend to all matters germane to the powers and duties
34 of the association, including, but not limited to, proposals for
35 reinsuring, reissuing, modifying or guaranteeing the policies or
36 contracts of the impaired or insolvent insurer and the termination of
37 the policies or contracts and contractual obligations. The association
38 shall also have the right to appear or intervene before a court in
39 another state with jurisdiction over an impaired or insolvent insurer
40 for which the association is or may become obligated or with
41 jurisdiction over **【a third party】** any person or property against whom
42 the association may have rights through subrogation **【of the insurer's**
43 **policyholders】** or otherwise.

44 m. (1) Any person receiving benefits under **【this act】** P.L.1991,
45 c.208 (C.17B:32A-1 et seq.) shall be deemed to have assigned the
46 rights under, and any causes of action relating to, the covered policy
47 or contract to the association to the extent of the benefits received

1 pursuant to **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.),
2 whether the benefits are payments of or on account of contractual
3 obligations, continuation of coverage or provision of substitute or
4 alternative policies, contracts, or coverages. The association may
5 require an assignment to it of such rights and causes of action by any
6 payee, policy or contract owner, beneficiary, insured, enrollee, or
7 annuitant as a condition precedent to the receipt of any right or
8 benefits conferred by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
9 seq.) upon that person.

10 (2) The subrogation rights of the association under this subsection
11 shall have the same priority against the assets of the impaired or
12 insolvent insurer as that possessed by the person entitled to receive
13 benefits under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

14 (3) In addition to the rights of subrogation contained in paragraphs
15 (1) and (2) of this subsection, the association shall have all common
16 law rights of subrogation and any other equitable or legal remedy
17 which would have been available to the impaired or insolvent insurer
18 or **【holder of a】** policy or contract owner, beneficiary, enrollee, or
19 payee with respect to that policy or contract.

20 (4) In addition to the rights contained in paragraphs (1), (2) and
21 (3) of this subsection, in the case of any unallocated annuity contract
22 for which benefits are paid by the association under **【this act】**
23 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
24 deemed to have assigned to it the rights and causes of action of any
25 employee or association of natural persons against the contract
26 **【holder】** owner of such unallocated annuity contract for the amounts
27 paid by the association under **【this act】** P.L.1991, c.208 (C.17B:32A-
28 1 et seq.).

29 (5) If the preceding provisions of this subsection are invalid or
30 ineffective with respect to any person or claim for any reason, the
31 amount payable by the association with respect to the related covered
32 obligations shall be reduced by the amount realized by any other
33 person with respect to the person or claim that is attributable to the
34 policies or contracts (or portion thereof) covered by the association.

35 (6) If the association has provided benefits with respect to a
36 covered obligation and a person recovers amounts as to which the
37 association has rights as described in the preceding paragraphs of this
38 subsection, the person shall pay to the association the portion of the
39 recovery attributable to the policies or contracts (or portion thereof)
40 covered by the association.

41 n. The association may:

42 (1) enter into any contracts necessary or proper to carry out the
43 provisions and purposes of **【this act】** P.L.1991, c.208 (C.17B:32A-1
44 et seq.);

45 (2) sue or be sued, including taking any legal actions necessary
46 or proper to recover any unpaid assessments imposed pursuant to

- 1 section 8 of **【this act】** P.L.1991, c.208 (C.17B:32A-8) and to settle
2 claims or potential claims against it;
- 3 (3) borrow money to effectuate the purposes of **【this act】**
4 P.L.1991, c.208 (C.17B:32A-1 et seq.). Any notes or other evidence
5 of indebtedness of the association not in default shall be legal
6 investments for domestic insurers and may be carried as admitted
7 assets;
- 8 (4) employ or retain persons necessary to handle the financial
9 transactions of the association, and to perform other functions as are
10 necessary or proper under **【this act】** P.L.1991, c.208 (C.17B:32A-1
11 et seq.);
- 12 (5) take any legal action necessary to avoid payment of improper
13 claims;
- 14 (6) exercise, for the purposes of **【this act】** P.L.1991, c.208
15 (C.17B:32A-1 et seq.) and to the extent approved by the
16 commissioner, the powers of a domestic life insurer or health insurer,
17 health service corporations, hospital service corporations, medical
18 service corporations, or health maintenance organizations but in no
19 case shall the association issue insurance policies or annuity
20 contracts other than those issued to perform its obligations under
21 **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.);
- 22 (7) organize itself as a corporation or in other legal form
23 permitted by the law of the State;
- 24 (8) request information from a person seeking coverage from the
25 association in order to aid the association in determining its
26 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.) with respect
27 to the person, and the person shall promptly comply with the request;
- 28 (9) unless prohibited by law, in accordance with the terms and
29 conditions of the policy or contract, file for actuarially justified rate
30 or premium increases for any policy or contract for which it provides
31 coverage under P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 32 (10) take other necessary or appropriate action to discharge its
33 duties and obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.)
34 or to exercise its powers under P.L.1991, c.208 (C.17B:32A-1 et
35 seq.).
- 36 o. The association may join an organization of one or more other
37 state associations of similar purposes, to further the purposes and
38 administer the powers and duties of the association.
- 39 p. (1) (a) At any time within 180 days of the date of the order
40 of liquidation, the association may elect to succeed to the rights and
41 obligations of the ceding member insurer that relate to policies,
42 contracts, or annuities covered, in whole or in part, by the
43 association, in each case under any one or more reinsurance contracts
44 entered into by the insolvent insurer and its reinsurers and selected
45 by the association. Any such assumption shall be effective as of the
46 date of the order of liquidation. The election shall be effected by the
47 association or the National Organization of Life and Health Insurance

1 Guaranty Associations (NOLGHA) on its behalf sending written
2 notice, return receipt requested, to the affected reinsurers.

3 (b) To facilitate the earliest practicable decision about whether to
4 assume any of the contracts of reinsurance, and in order to protect the
5 financial positions of the estate, the receiver and each reinsurer of the
6 ceding member insurer shall make available upon request to the
7 association or the NOLGHA on its behalf as soon as possible after
8 commencement of formal delinquency proceedings:

9 (i) copies of in-force contracts of reinsurance and all related files
10 and records relevant to the determination of whether such contracts
11 should be assumed; and

12 (ii) notices of any defaults under the reinsurance contracts or any
13 known event or condition which with the passage of time could
14 become a default under the reinsurance contracts.

15 (c) The following subparagraphs shall apply to reinsurance
16 contracts so assumed by the association:

17 (i) The association shall be responsible for all unpaid premiums
18 due under the reinsurance contracts for periods both before and after
19 the date of the order of liquidation, and shall be responsible for the
20 performance of all other obligations to be performed after the date of
21 the order of liquidation, in each case which relate to policies,
22 contracts, or annuities covered, in whole or in part, by the
23 association. The association may charge policies, contracts, or
24 annuities covered in part by the association, through reasonable
25 allocation methods, the costs for reinsurance in excess of the
26 obligations of the association and shall provide notice and an
27 accounting of these charges to the liquidator;

28 (ii) The association shall be entitled to any amounts payable by
29 the reinsurer under the reinsurance contracts with respect to losses or
30 events that occur in periods after the date of the order of liquidation
31 and that relate to policies, contracts, or annuities covered, in whole
32 or in part, by the association, provided that, upon receipt of those
33 amounts, the association shall be obliged to pay to the beneficiary
34 under the policy, contracts, or annuity on account of which the
35 amounts were paid a portion of the amount equal to the lesser of (1)
36 the amount received by the association; and (2) the excess of the
37 amount received by the association over the amount equal to the
38 benefits paid by the association on account of the policy, contracts,
39 or annuity less the retention of the insurer applicable to the loss or
40 event.

41 (iii) Within 30 days following the association's election (the
42 "election date"), the association and each reinsurer under contracts
43 assumed by the association shall calculate the net balance due to or
44 from the association under each reinsurance contract as of the
45 election date with respect to policies, contracts or annuities covered,
46 in whole or in part, by the association, which calculation shall give
47 full credit to all items paid by either the member insurer or its receiver
48 or the reinsurer prior to the election date. The reinsurer shall pay the

1 receiver any amounts due for losses or events prior to the date of the
2 order of liquidation, subject to any set-off for premiums unpaid for
3 periods prior to the date, and the association or reinsurer shall pay
4 any remaining balance due the other, in each case within five days of
5 the completion of the aforementioned calculation. Any disputes over
6 the amounts due to either the association or the reinsurer shall be
7 resolved by arbitration pursuant to the terms of the affected
8 reinsurance contracts or, if the contract contains no arbitration clause,
9 as otherwise provided by law. If the receiver has received any
10 amounts due the association pursuant to subparagraph (ii) of this
11 subparagraph, the receiver shall remit the same to the association as
12 promptly as practicable.

13 (iv) If the association or receiver, on the association's behalf,
14 within 60 days of the election date, pays the unpaid premiums due
15 for periods both before and after the election date that relate to
16 policies, contracts, or annuities covered, in whole or in part, by the
17 association, the reinsurer shall not be entitled to terminate the
18 reinsurance contracts for failure to pay premium insofar as the
19 reinsurance contracts relate to policies, contracts, or annuities
20 covered, in whole or in part, by the association, and shall not be
21 entitled to set off any unpaid amounts due under other contracts, or
22 unpaid amounts due from parties other than the association, against
23 amounts due the association.

24 (2) During the period from the date of the order of liquidation
25 until the election date (or, if the election date does not occur, until
26 180 days after the date of the order of liquidation):

27 (a) (i) the association and the reinsurer shall not have rights or
28 obligations under reinsurance contracts that the association has the
29 right to assume under paragraph (1) of this subsection, whether for
30 period prior to or after the date of the order of liquidation; and

31 (ii) the reinsurer, the receiver and the association shall, to the
32 extent, practicable, provide each other data and records reasonably
33 requested.

34 (b) provided that once the association has elected to assume a
35 reinsurance contract, the parties' rights and obligations shall be
36 governed paragraph (1) of this subsection.

37 (3) If the association does not elect to assume a reinsurance
38 contract by the election date pursuant to paragraph (1) of this
39 subsection, the association shall have no rights or obligations, in each
40 case for periods both before and after the date of the order of
41 liquidation, with respect to the reinsurance contract.

42 (4) When policies, contracts, or annuities, or covered obligations
43 with respect thereto, are transferred to an assuming insurer,
44 reinsurance on the policies, contracts, or annuities may also be
45 transferred by the association, in the case of contracts assumed under
46 paragraph (1) of this subsection, subject to the following:

1 (a) unless the reinsurer and the assuming insurer agree otherwise,
2 the reinsurance contract transferred shall not cover any new policies
3 of insurance, contracts, or annuities in addition to those transferred;

4 (b) the obligations described in paragraph (1) of this subsection
5 shall no longer apply with respect to matters arising after the
6 effective date of the transfer; and

7 (c) notice shall be given in writing, return receipt requested, by
8 the transferring party to the affected reinsurer not less than 30 days
9 prior to the effective date of the transfer.

10 (5) The provisions of this subsection shall supersede the
11 provisions of any State law or any affected reinsurance contract that
12 provides for or requires any payment of reinsurance proceeds, on
13 account of losses or events that occur in periods after the date of the
14 order of liquidation, to the receiver of the insolvent insurer or any
15 other person. The receiver shall remain entitled to any amounts
16 payable by the reinsurer under the reinsurance contracts with respect
17 to losses or events that occur in periods prior to the date of the order
18 of liquidation, subject to applicable setoff provisions.

19 (6) Except as otherwise provided in this subsection, nothing in
20 this subsection shall alter or modify the terms and conditions of any
21 reinsurance contract. Nothing in this subsection shall abrogate or
22 limit any rights of any reinsurer to claim that it is entitled to rescind
23 a reinsurance contract. Nothing in this subsection shall give a
24 policyholder, contract owner, enrollee, certificate holder, or
25 beneficiary an independent cause of action against a reinsurer that is
26 not otherwise set forth in the reinsurance contract. Nothing in this
27 subsection shall limit or affect the association's rights as a creditor
28 of the estate against the assets of the estate. Nothing in this subsection
29 shall apply to reinsurance agreements covering property or casualty
30 risks.

31 q. The board of directors of the association shall have discretion
32 and may exercise reasonable business judgment to determine the
33 means by which the association is to provide the benefits of P.L.1991,
34 c.208 (C.17B:32A-1 et seq.) in an economical and efficient manner.

35 r. Where the association has arranged or offered to provide the
36 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) to a covered
37 person under a plan or arrangement that fulfills the association's
38 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.), the person
39 shall not be entitled to benefits from the association in addition to or
40 other than those provided under the plan or arrangement.

41 s. Venue in a suit against the association arising under P.L.1991,
42 c.208 (C.17B:32A-1 et seq.) shall be in Monmouth County. The
43 association shall not be required to give an appeal bond in an appeal
44 that relates to a cause of action arising under P.L.1991, c.208
45 (C.17B:32A-1 et seq.).

46 t. In carrying out its duties in connection with guaranteeing,
47 assuming, reissuing, or reinsuring policies or contracts under
48 subsections a., b., c, or d. of this section, the association may issue

1 substitute coverage for a policy or contract that provides an interest
2 rate, crediting rate or similar factor determined by use of an index or
3 other external reference stated in the policy or contract employed in
4 calculating returns or changes in value by issuing an alternative
5 policy or contract in accordance with the following provisions:

6 (1) in lieu of the index or external reference provided for in the
7 original policy or contract, the alternative policy or contract provides
8 for a fixed interest rate; payment of dividends with minimum
9 guarantees; or a different method for calculating interest or changes
10 in value;

11 (2) there is no requirement for evidence of insurability, waiting
12 period or other exclusion that would not have applied under the
13 replaced policy or contract; and

14 (3) the alternative policy or contract is substantially similar to the
15 replaced policy or contract in all other material terms.

16 u. A deposit in this State, held pursuant to law or required by the
17 commissioner for the benefit of creditors, including policy or
18 contract owners, not turned over to the domiciliary liquidator upon
19 the entry of a final order of liquidation or order approving a
20 rehabilitation plan of a member insurer domiciled in this State or in
21 a reciprocal state pursuant to section 57 of P.L.1992, c.65 (C.17B:32-
22 87) shall be promptly paid to the association. The association shall
23 be entitled to retain a portion of any amount so paid to it equal to the
24 percentage determined by dividing the aggregate amount of policy or
25 contract owners' claims related to that insolvency for which the
26 association has provided statutory benefits by the aggregate amount
27 of all policy or contract owners' claims in the State related to that
28 insolvency and shall remit to the domiciliary receiver the amount so
29 paid to the association less the amount retained pursuant to this
30 subsection. Any amount so paid to the association and retained by it
31 shall be treated as a distribution of estate assets pursuant to applicable
32 State receivership law dealing with early access disbursements.

33 (cf: P.L.1991, c.208, s.7)

34
35 7. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to
36 read as follows:

37 8. a. For the purpose of providing the funds necessary to carry
38 out the powers and duties of the association, the board of directors
39 shall assess the member insurers, separately for each account, at such
40 time and for such amounts as the board finds necessary. Assessments
41 shall be due not less than 30 days after prior written notice to the
42 member insurers and shall accrue interest at the percentage of interest
43 prescribed in the Rules Governing the Courts of the State of New
44 Jersey for judgments, awards and orders for the payment of money,
45 on and after the due date.

46 b. There shall be two classes of assessments, as follows:

47 (1) Class A assessments shall be made for the purpose of meeting
48 administrative and legal costs of the association which are not

1 objected to by the commissioner and other expenses **[and**
2 examinations conducted under the authority of subsection e. of
3 section 11 of this act**]**. Class A assessments shall also be made, upon
4 the request of the commissioner, for the purpose of meeting costs
5 incurred by or on behalf of the department in the administration of an
6 insolvent insurer to the extent those costs exceed assets of the
7 insolvent insurer available for that purpose. Class A assessments
8 need not be related to a particular impaired or insolvent insurer. The
9 amount of any Class A assessment shall be determined by the board.

10 (2) Class B assessments shall be made to the extent necessary to
11 carry out the powers and duties of the association under section 7 of
12 **[this act]** P.L.1991, c.208 (C.17B:32A-7) with respect to an impaired
13 or an insolvent insurer. The amount of any Class B assessment,
14 except for assessments related to long-term care insurance, shall be
15 allocated for assessment purposes **[among]** between the accounts
16 and among subaccounts of the life insurance and annuity account,
17 pursuant to an allocation formula which may be based on the
18 premiums or reserves of the impaired or insolvent insurer or any
19 other standard deemed by the board in its sole discretion as being fair
20 and reasonable under the circumstances.

21 (3) The amount of Class B assessments for long-term care
22 insurance written by the impaired or insolvent insurer shall be
23 allocated according to a methodology included in the plan of
24 operation and approved by the commissioner. The methodology shall
25 provide for 50 percent of the assessment to be allocated to accident
26 and health member insurers and 50 percent to be allocated to life and
27 annuity member insurers.

28 c. (1) Class B assessments against member insurers for each
29 account and subaccount shall be in the proportion that the premiums
30 received on business in this State by each assessed member insurer
31 on policies or contracts covered by each account for the three most
32 recent calendar years for which information is available preceding
33 the year in which the member insurer became impaired or insolvent,
34 as the case may be, bears to such premiums received on business in
35 this State for such calendar years by all assessed member insurers.

36 (2) Assessments for funds to meet the requirements of the
37 association with respect to an impaired or insolvent insurer shall be
38 made as necessary to implement the purposes of **[this act]** P.L.1991,
39 c.208 (C.17B:32A-1 et seq.). Classification of assessments under
40 subsection b. of this section and computation of assessments under
41 this subsection c. shall be made with a reasonable degree of accuracy,
42 recognizing that exact determinations may not always be possible.

43 d. The association shall **[exempt,]** abate or defer, in whole or in
44 part, the assessment of a member insurer if, in the opinion of the
45 commissioner, payment of the assessment would endanger the ability
46 of the member insurer to fulfill its contractual obligations or places
47 the member insurer in an unsafe or unsound financial condition. In

1 the event an assessment against a member insurer is **[exempted,]**
2 abated or deferred, in whole or in part, the amount by which that
3 assessment is **[exempted,]** abated or deferred shall be assessed
4 against the other member insurers in a manner consistent with the
5 basis for assessments set forth in this section. Once the conditions
6 that caused a deferral have been removed or rectified, the member
7 insurer shall pay all assessments that were deferred pursuant to a
8 repayment plan approved by the commissioner.

9 e. (1) The total of all assessments imposed under subsection b.
10 of this section upon a member insurer for the life insurance and
11 annuity account and for each subaccount thereunder shall not in any
12 one calendar year exceed two percent and for the health **[insurance]**
13 account shall not in any one calendar year exceed two percent of that
14 member insurer's average premiums, as reported in the annual
15 statement in a form prescribed by the commissioner, received in this
16 State on the policies and contracts covered by the account during the
17 three calendar years preceding the year in which the member insurer
18 became an impaired or insolvent insurer. If the maximum assessment,
19 together with the other assets of the association in any account, does
20 not provide in any one year in either account an amount sufficient to
21 carry out the responsibilities of the association, the necessary
22 additional funds shall be assessed as soon thereafter as permitted by
23 **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.)

24 (2) If a one percent assessment for any subaccount of the life
25 insurance and annuity account in any one year does not provide an
26 amount sufficient to carry out the responsibilities of the association,
27 then pursuant to paragraph (1) of subsection c. of this section, the
28 board shall assess all subaccounts of the life insurance and annuity
29 account for the necessary additional amount, subject to the maximum
30 stated in paragraph (1) of this subsection.

31 (3) The board may provide in the plan of operation a method of
32 allocating funds among claims, whether relating to one or more
33 impaired or insolvent insurers, when the maximum assessment will
34 be insufficient to cover anticipated claims.

35 f. The board may, by an equitable method as established in the
36 plan of operation, refund to member insurers, in proportion to the
37 contribution of each member insurer to that account, the amount by
38 which the assets of an account exceed the amount the board, with the
39 concurrence of the commissioner, finds is necessary to carry out
40 during the coming year the obligations of the association with respect
41 to that account, including assets accruing from assignment,
42 subrogation, net realized gains and income from investments. A
43 reasonable amount may be retained in any account to provide funds
44 for the continuing expenses of the association and for future losses.

45 g. Except for that portion of assessments **[which]** that may be
46 offset against premium taxes pursuant to section 18 of **[this act]**
47 P.L.1991, c.208 (C.17B:32A-18), it shall be proper for any member

1 insurer, in determining its premium rates and policy owner dividends
2 as to any kind of insurance, health service corporation business,
3 hospital service corporation business, medical service corporation
4 business, or health maintenance organization business within the
5 scope of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), to
6 consider the amount reasonably necessary to meet its assessment
7 obligations under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

8 h. The association shall issue to each member insurer paying an
9 assessment pursuant to **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
10 seq.), other than a Class A assessment, a certificate of contribution,
11 in a form and manner prescribed by the commissioner, for the amount
12 of the assessment so paid. All outstanding certificates shall be of
13 equal dignity and priority without reference to amount or date of
14 issue. A certificate of contribution may be shown by the member
15 insurer in its financial statement as an asset in such form and manner
16 and for such amount and period of time as the commissioner may
17 approve.

18 i. (1) A member insurer that wishes to protest all or part of an
19 assessment shall pay when due the full amount of the assessment as
20 set forth in the notice provided by the association. The payment shall
21 be available to meet association obligations during the pendency of
22 the protest or any subsequent appeal. Payment shall be accompanied
23 by a statement in writing that the payment is made under protest and
24 setting forth a brief statement of the grounds for the protest.

25 (2) Within 60 days following the payment of an assessment under
26 protest by a member insurer, the association shall notify the member
27 insurer in writing of its determination with respect to the protest
28 unless the association notifies the member insurer that additional
29 time is required to resolve the issues raised by the protest.

30 (3) Within 30 days after a final decision has been made, the
31 association shall notify the protesting member insurer in writing of
32 that final decision. Within 60 days of receipt of notice of the final
33 decision, the protesting member insurer may appeal that final action
34 to the commissioner.

35 (4) In the alternative to rendering a final decision with respect to
36 a protest based on a question regarding the assessment base, the
37 association may refer protests to the commissioner for a final
38 decision, with or without a recommendation from the association.

39 (5) If the protest or appeal on the assessment is upheld, the
40 amount paid in error or excess shall be returned to the member
41 insurer. Interest on a refund due a protesting member insurer shall be
42 paid at the rate actually earned by the association.

43 j. The association may request information of member insurers
44 in order to aid in the exercise of its power under this section and
45 member insurers shall promptly comply with a request.

46 (cf: P.L.1994, c.180 s.1)

1 8. Section 9 of P.L.1991, c.208 (C.17B:32A-9) is amended to
2 read as follows:

3 9. a. (1) The association shall submit to the commissioner a
4 plan of operation and any amendments thereto necessary or suitable
5 to assure the fair, reasonable, and equitable administration of the
6 association. The plan of operation and any amendments thereto shall
7 become effective upon the commissioner's written approval or at the
8 expiration of 30 days after submission if it has not been disapproved.

9 (2) If the association fails to submit a suitable plan of operation
10 within 120 days following the effective date of **【this act】** P.L.1991,
11 c.208 (C.17B:32A-1 et seq.) or if at any time thereafter the
12 association fails to submit suitable amendments to the plan, the
13 commissioner shall adopt such plan or amendments necessary to
14 effectuate the provisions of **【this act】** P.L.1991, c.208 (C.17B:32A-
15 1 et seq.). The plan or amendments shall continue in force until
16 modified by the commissioner or superseded by a plan submitted by
17 the association and approved by the commissioner.

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

19 c. The plan of operation shall, in addition to requirements
20 enumerated elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
21 seq.):

22 (1) establish procedures for handling the assets of the association;

23 (2) establish the amount and method of reimbursing members of
24 the board of directors under subsection c. of section 6 of **【this act】**
25 P.L.1991, c.208 (C.17B:32A-6);

26 (3) establish regular places and times for meetings, including
27 telephone conference calls, of the board of directors;

28 (4) establish procedures for records to be kept of all financial
29 transactions of the association, its agents, and the board of directors;

30 (5) establish the procedures whereby selections for the board of
31 directors will be made and submitted to the commissioner;

32 (6) establish any additional procedures for the imposition of
33 assessments under section 8 of **【this act】** P.L.1991, c.208
34 (C.17B:32A-8); **【and】**

35 (7) contain additional provisions necessary or proper for the
36 execution of the powers and duties of the association;

37 (8) establish procedures whereby a director may be removed for
38 cause, including in the case where a member insurer director becomes
39 an impaired or insolvent insurer; and

40 (9) require the board of directors to establish a policy and
41 procedures for addressing conflicts of interests.

42 d. The plan of operation may provide for the delegation of any
43 or all powers and duties of the association, except those set forth in
44 paragraph (3) of subsection m. of section 7 of P.L.1991, c.208
45 (C.17B:32A-7) and section 8 of **【this act】** P.L.1991, c.208
46 (C.17B:32A-8), to a corporation, association, or other organization
47 which performs or will perform functions similar to those of the

1 association, or its equivalent, in two or more other states. Such a
2 corporation, association, or organization shall be reimbursed for any
3 payments made on behalf of the association and shall be paid for its
4 performance of any function of the association. A delegation under
5 this subsection d. shall take effect only with the approval of both the
6 board of directors and the commissioner, and may be made only to a
7 corporation, association, or organization which extends protection
8 not substantially less favorable or effective than that provided by
9 **【this act】 P.L.1991, c.208 (C.17B:32A-1 et seq.)**.
10 (cf: P.L.1991, c.208, s.9)

11
12 9. Section 10 of P.L.1991, c.208 (C.17B:32A-10) is amended to
13 read as follows:

14 10. a. In addition to the duties and powers enumerated elsewhere
15 in **【this act】 P.L.1991, c.208 (C.17B:32A-1 et seq.)**, the
16 commissioner shall:

17 (1) upon request of the board of directors, provide the association
18 with a statement of the premiums in this State and any other
19 appropriate states for each member insurer;

20 (2) when an impairment is declared and the amount of the
21 impairment is determined, serve a demand upon the impaired insurer
22 to make good the impairment within a reasonable time. Notice to the
23 impaired insurer shall constitute notice to its shareholders, if any.
24 The failure of the impaired insurer to promptly comply with a
25 demand shall not excuse the association from the performance of its
26 powers and duties under **【this act】 P.L.1991, c.208 (C.17B:32A-1 et**
27 **seq.)**;

28 (3) in any liquidation or rehabilitation proceeding involving a
29 domestic member insurer, be appointed as the liquidator or
30 rehabilitator.

31 b. The commissioner may suspend or revoke, after notice and
32 hearing, the certificate of authority to transact **【insurance】 business**
33 in this State of any member insurer which fails to pay an assessment
34 when due or fails to comply with the plan of operation. As an
35 alternative, the commissioner may levy a penalty on any member
36 insurer which fails to pay an assessment when due. That penalty shall
37 not exceed five percent of the unpaid assessment per month, but no
38 penalty shall be less than \$100 per month.

39 c. Any action of the board of directors or the association may be
40 appealed to the commissioner by any member insurer if that appeal
41 is taken within **【30】 60** days of its receipt of notice of the final action
42 being appealed. If a member **【company】 insurer** is appealing an
43 assessment, the amount assessed shall be paid to the association and
44 made available to meet association obligations during the pendency
45 of an appeal. If the appeal of an assessment is upheld, the amount
46 paid in error or excess shall be returned to the member **【company】**

1 insurer. Any final action or order of the commissioner shall be subject
2 to judicial review in a court of competent jurisdiction.

3 d. The liquidator, rehabilitator, or conservator **【or receiver】** of
4 any impaired insurer may notify all interested persons of the effect
5 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
6 (cf: P.L.1991, c.208, s.10)

7

8 10. Section 11 of P.L.1991, c.208 (C.17B:32A-11) is amended to
9 read as follows:

10 11. a. To aid in the detection and prevention of member insurer
11 insolvencies or impairments, the commissioner may:

12 (1) notify the commissioners of insurance or comparable officials
13 of all the other states, territories of the United States and the District
14 of Columbia within 30 days when he takes any of the following
15 actions against a member insurer:

16 (a) revokes its certificate of authority or license;

17 (b) suspends its certificate of authority or license; or

18 (c) makes any formal order that the member insurer restrict its
19 premium writing, obtain additional contributions to surplus,
20 withdraw from this State, reinsure all or part of its business, or
21 increase capital, surplus, or any other account for the security of
22 **【policyholders】** policy or contract owners, certificate holders, or
23 creditors.

24 Notice shall be made in any form the commissioner deems
25 appropriate, including notification under the auspices of the National
26 Association of Insurance Commissioners, hereinafter referred to as
27 NAIC.

28 (2) report to the board of directors when he has taken any of the
29 actions set forth in paragraph (1) of this subsection or has received
30 notification from the commissioner of insurance or comparable
31 official of any other jurisdiction that any such action has been taken
32 in that jurisdiction. The report to the board of directors shall contain
33 all significant details of the action taken or of any such notification
34 received from another jurisdiction.

35 (3) report to the board of directors when he has reasonable cause
36 to believe from any examination, whether completed or in process,
37 of any member **【company】** insurer that the **【company】** member
38 insurer may be an impaired or insolvent insurer. The report and the
39 information therein shall be kept confidential by the board of
40 directors.

41 (4) furnish to the board of directors the NAIC Insurance
42 Regulatory Information System (IRIS) ratios and a list of companies
43 not included in the ratios developed by the NAIC. The board may
44 use the information contained therein in carrying out its duties and
45 responsibilities under this section. The report and information
46 contained therein shall be kept confidential by the board of directors
47 until such time as made public by the commissioner or other lawful
48 authority.

1 b. The commissioner may seek the advice and recommendations
2 of the board of directors **【or member insurers】** concerning any matter
3 affecting **【his】** the duties and responsibilities of the commissioner
4 regarding the financial condition of member insurers and
5 **【companies】** member insurers, health service corporations, hospital
6 service corporations, medical service corporations, or health
7 maintenance organizations seeking admission to transact **【insurance】**
8 business in this State.

9 c. The board of directors **【or any member thereof】** may, upon
10 majority vote, make reports and recommendations to the
11 commissioner upon any matter germane to the solvency, liquidation,
12 rehabilitation, conservation or receivership of any member insurer or
13 germane to the solvency of any **【company】** insurer, health service
14 corporation, hospital service corporation, medical service
15 corporation, or health maintenance organization seeking to do
16 **【insurance】** business in this State. Reports and recommendations
17 made pursuant to this subsection shall not be considered public
18 documents.

19 d. **【It shall be the duty of the】** The board of directors may, upon
20 majority vote, **【to】** notify the commissioner of any information
21 indicating any member insurer may be an impaired or insolvent
22 insurer.

23 e. **【The** board of directors may, upon majority vote, request that
24 the commissioner order an examination of any member insurer which
25 the board in good faith believes may be an impaired or insolvent
26 insurer. Such an examination may be conducted as a NAIC
27 examination or may be conducted by those persons as the
28 commissioner designates. The cost of the examination may be paid
29 by the association and the examination report shall be treated as are
30 other examination reports. In no event shall the examination report
31 be released to the board of directors of the association prior to its
32 release to the public, but this shall not preclude the commissioner
33 from taking action permitted by subsection a. of this section.

34 The commissioner shall notify the board of directors when the
35 examination is completed. The request for an examination shall be
36 kept on file by the commissioner, but it shall not be open to public
37 inspection, if at all, prior to the release of the examination report to
38 the public **【(Deleted by amendment, P.L. , c. (pending before the**
39 Legislature as this bill).

40 f. The board of directors may, upon majority vote, make
41 recommendations to the commissioner for the detection and
42 prevention of member insurer insolvencies.

43 **【g.** The board of directors may, at the conclusion of any insurer
44 insolvency in which the association was obligated to pay covered
45 claims, prepare a report to the commissioner containing any
46 information it may have in its possession bearing on the history and
47 causes of that insolvency. The board shall cooperate with the boards

1 of directors of guaranty associations in other states in preparing a
2 report on the history and causes of insolvency of a particular insurer,
3 and may adopt by reference any report prepared by another
4 association】 (Deleted by amendment, P.L. , c. (pending before
5 the Legislature as this bill).

6 (cf: P.L.1991, c.208, s.11)

7
8 11. Section 12 of P.L.1991, c.208 (C.17B:32A-12) is amended to
9 read as follows:

10 12. a. Nothing in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
11 seq.) or P.L. , c. (C.) (pending before the Legislature as this
12 bill) shall be construed to reduce the liability for unpaid assessments
13 of the insureds or enrollees of an impaired or insolvent insurer
14 operating under a plan with assessment liability.

15 b. Records shall be kept of all negotiations and meetings in
16 which the association or its representatives are involved to discuss
17 the activities of the association in carrying out its powers and duties
18 under section 7 of **【this act】** P.L.1991, c.208 (C.17B:32A-7).
19 Records of those negotiations or meetings shall be made public only
20 upon the termination of a liquidation, rehabilitation, or conservation
21 **【or receivership】** proceeding involving an impaired or insolvent
22 insurer, upon the termination of the impairment or insolvency of the
23 member insurer, or upon the order of a court of competent
24 jurisdiction.

25 c. For the purpose of carrying out its obligations under **【this act】**
26 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
27 deemed to be a creditor of an impaired or insolvent insurer to the
28 extent of assets attributable to covered policies or contracts reduced
29 by any amounts to which the association is entitled as subrogee
30 pursuant to subsection m. of section 7 of **【this act】** P.L.1991, c.208
31 (C.17B:32A-7). Assets of an impaired or insolvent insurer
32 attributable to covered policies or contracts shall be used to continue
33 all covered policies or contracts and pay all contractual obligations
34 of the impaired or insolvent insurer as required by **【this act】**
35 P.L.1991, c.208 (C.17B:32A-1 et seq.). For purposes of this
36 subsection, assets attributable to covered policies or contracts are that
37 proportion of the assets which the reserves that should have been
38 established for such policies or contracts bears to the reserves that
39 should have been established for all policies or contracts of insurance
40 or health benefit plans written by the impaired or insolvent insurer.

41 d. As a creditor of the impaired or insolvent insurer as
42 established in subsection c. of this section and consistent with section
43 33 of P.L.1992, c.65 (C.17B:32-63), the association and other similar
44 associations shall be entitled to receive a disbursement of assets out
45 of the marshaled assets, from time to time as the assets become
46 available to reimburse it, as a credit against contractual obligations
47 under P.L.1991, c.208 (C.17B:32A-1 et seq.). If the liquidator has

1 not, within 120 days of a final determination of insolvency of a
2 member insurer by the receivership court, made an application to the
3 court for the approval of a proposal to disburse assets out of
4 marshaled assets to guaranty associations having obligations because
5 of the insolvency, then the association shall be entitled to make
6 application to the receivership court for approval of its own proposal
7 to disburse these assets.

8 (1) Prior to the termination of any receivership, liquidation,
9 rehabilitation or conservation proceeding, the court may take into
10 consideration the contributions of the respective parties, including
11 the association, the shareholders, enrollees, certificate holders, and
12 **【policyowners】** policy or contract owners of an insolvent insurer,
13 and any other party with a bona fide interest in making an equitable
14 distribution of the ownership rights of that insolvent insurer. In
15 making such a determination, consideration shall be given to the
16 welfare of the **【policyholders】** policy or contract owners, enrollees,
17 and certificate holders, and to the reasonable requirements of a
18 continuing or successor member insurer.

19 (2) No dividend or other distribution to stockholders or
20 policyholders of an impaired or insolvent insurer shall be made until
21 and unless the total amount of valid claims of the association with
22 interest thereon for funds expended in carrying out its powers and
23 duties under section 7 of **【this act】** P.L.1991, c.208 (C.17B:32A-7)
24 with respect to that member insurer have been recovered by the
25 association.

26 e. (1) If an order for liquidation or rehabilitation of **【an】** a
27 member insurer domiciled in this State has been entered, the receiver
28 appointed under that order shall have a right to recover on behalf of
29 the member insurer, from any affiliate that controlled it, the amount
30 of distributions, other than stock dividends paid by the member
31 insurer on its capital stock, made at any time during the five years
32 preceding the petition for liquidation or rehabilitation subject to the
33 limitations of paragraphs (2) through (4) of this subsection.

34 (2) No such distribution shall be recoverable if the member
35 insurer shows that the distribution was lawful and reasonable when
36 paid, and that the member insurer did not know and could not
37 reasonably have known that the distribution might adversely affect
38 the ability of the member insurer to fulfill its contractual obligations.

39 (3) Any person who was an affiliate that controlled the member
40 insurer at the time the distributions were paid shall be liable up to the
41 amount of distributions **【he】** received. Any person who was an
42 affiliate that controlled the member insurer at the time the
43 distributions were declared, shall be liable up to the amount of
44 distributions **【he】** which would have been received if they had been
45 paid immediately. If two or more persons are liable with respect to
46 the same distributions, they shall be jointly and severally liable.

1 (4) The maximum amount recoverable under this subsection shall
2 be the amount in excess of all other available assets of the insolvent
3 insurer needed to pay the contractual obligations of the insolvent
4 insurer.

5 (5) If any person liable under paragraph (3) of this subsection is
6 insolvent, all its affiliates that controlled it at the time the distribution
7 was paid shall be jointly and severally liable for any resulting
8 deficiency in the amount recovered from the insolvent affiliate.

9 (cf: P.L.1991, c.280, s.12)

10

11 12. Section 13 of P.L.1991, c.208 (C.17B:32A-13) is amended to
12 read as follows:

13 13. The association shall be subject to examination and regulation
14 by the commissioner. The board of directors shall submit to the
15 commissioner each year, not later than 120 days after the close of the
16 association's fiscal year, a financial report in a form approved by the
17 commissioner and a report of its activities during the preceding fiscal
18 year. Upon request of a member insurer, the association shall provide
19 a copy of the report.

20 (cf: P.L.1991, c.208, s.13)

21

22 13. Section 15 of P.L.1991, c.208 (C.17B:32A-15) is amended to
23 read as follows:

24 15. a. There shall be no liability on the part of, and no cause of
25 action of any nature shall arise against, any member insurer or its
26 agents or employees, the association or its agents or employees,
27 members of the board of directors, or the commissioner or his
28 representatives, for any action or omission by them in the
29 performance of their powers and duties under **【this act】** P.L.1991,
30 c.208 (C.17B:32A-1 et seq.). This immunity shall extend to the
31 participation in any organization of one or more other state
32 associations of similar purposes and to any such organization and its
33 agents or employees.

34 b. With respect to any impairment or insolvency of a health
35 service corporation created pursuant to P.L.1985, c.236 (C.17:48E-1
36 et seq.), the association shall have no cause of action against any not-
37 for-profit or nonprofit corporation that is regulated by a law
38 governing the conduct of not-for-profit or nonprofit corporations,
39 except in the event of willful or wanton conduct, unless the not-for-
40 profit or nonprofit corporation is a provider of health care services as
41 defined in section 1 of P.L.1985, c.236 (C.17:48E-1). For purposes
42 of this subsection, "willful or wanton conduct" means a course of
43 action which shows the actual or deliberate intent to cause harm.

44 (cf: P.L.1991, c.208, s.15)

45

46 14. Section 16 of P.L.1991, c.208 (C.17B:32A-16) is amended to
47 read as follows:

1 16. Upon application and notice, all proceedings in which an
2 insolvent insurer is a party or is obligated to defend a party in any
3 court in this State shall be stayed for **[120]** 180 days and any
4 additional time thereafter as may be determined by the court from the
5 date the insolvency is determined or any ancillary proceeding is
6 initiated in the State, whichever is later, to permit proper defense by
7 the association of all pending causes of action. With respect to any
8 covered claims arising from a judgment under any decision, verdict
9 or finding based on the default of the insolvent insurer or its failure
10 to defend an insured, the association either on its own behalf or on
11 behalf of the insured may apply to have the judgment, order, decision,
12 verdict or finding set aside by the court in which the judgment, order,
13 decision, verdict or finding is entered and shall be permitted to
14 defend against the claim on the merits.

15 (cf: P.L.1991, c.208, s.16)

16
17 15. Section 17 of P.L.1991, c.208 (C.17B:32A-17) is amended to
18 read as follows:

19 17. a. No person, including **[an]** a member insurer, agent or
20 affiliate of **[an]** a member insurer or insurance producer shall make,
21 publish, disseminate, circulate or place before the public or cause
22 directly or indirectly, to be made, published, disseminated, circulated
23 or placed before the public, in any newspaper, magazine or other
24 publication or in the form of a notice, circular, pamphlet, letter or
25 poster, or over any radio station or television station, or in any other
26 way, any advertisement, announcement or statement, written or oral,
27 which uses the existence of the association for the purpose of sales,
28 solicitation, or inducement to purchase any form of insurance or other
29 coverage covered by [this act] P.L.1991, c.208 (C.17B:32A-1 et
30 seq.). This subsection shall not apply to the department or the
31 association or to any other entity which does not sell or solicit
32 insurance or coverage by a health service corporation, hospital
33 service corporation, medical service corporation, or health
34 maintenance organization.

35 b. Within 180 days of the effective date of **[this act]** P.L.1991,
36 c.208 (C.17B:32A-1 et seq.), the association shall prepare a summary
37 document describing the general purposes and current limitations of
38 **[the act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) which complies with
39 subsection c. of this section. This document shall be submitted to the
40 commissioner for approval. Sixty days after receiving that approval,
41 no member insurer may deliver a policy or contract described in
42 subsection b. of section 3 of **[this act]** P.L.1991, c.208 (C.17B:32A-
43 3) to a policy or contract **[holder]** owner, certificate holder, or
44 enrollee unless the document is delivered to the policy or contract
45 **[holder]** owner, certificate holder, or enrollee prior to or at the time
46 of delivery of the policy or contract. The document should also be
47 available upon request by a **[policyholder]** policy or contract owner,

1 certificate holder, or enrollee. The distribution, delivery, contents or
2 interpretation of this document shall not mean that either the policy
3 or the contract or the policy or contract owner, certificate holder, or
4 enrollee thereof would be covered in the event of the impairment or
5 insolvency of a member insurer. The document shall be revised by
6 the association as amendments to the act may require. Failure to
7 receive this document does not give the **【policyholder】** policy or
8 contract **【holder】** owner, certificate holder, enrollee, or insured any
9 greater rights than those stated in **【this act】** P.L.1991, c.208
10 (C.17B:32A-1 et seq.). **【Delivery of the document required by this**
11 **subsection shall not be required however, in the case of a policy or**
12 **contract excluded from coverage under this act pursuant to**
13 **subsection c. of section 3 of this act and with respect to which notice**
14 **as required by subsection d. of this section has been given.】**

15 c. The document prepared pursuant to subsection b. of this
16 section shall contain a clear and conspicuous disclaimer on its face.
17 The commissioner shall promulgate a rule establishing the form and
18 content of the disclaimer. The disclaimer shall:

19 (1) state the name and address of the association and the
20 department;

21 (2) prominently warn the policy owner, contract owner,
22 certificate holder, or **【contract holder】** enrollee that the association
23 may not cover the policy or contract or, if coverage is available, it
24 will be subject to substantial limitations and exclusions and
25 conditioned on continued residence in this State;

26 (3) state that the member insurer and its **【insurance】** producers
27 are prohibited by law from using the existence of the association for
28 the purpose of sales, solicitation or inducement to purchase any form
29 of insurance, health service corporation coverage, hospital service
30 corporation coverage, medical service corporation coverage, or
31 health maintenance organization coverage;

32 (4) emphasize that the policy or contract owner, certificate holder,
33 or **【contract holder】** enrollee should not rely on coverage under the
34 association when selecting **【an】** a member insurer, health service
35 corporation, hospital service corporation, medical service
36 corporation, or health maintenance organization; 【and】

37 (5) state the types of policies or contracts for which guaranty
38 funds will provide coverage;

39 (6) explain rights available and procedures for filing a complaint
40 to allege a violation of any provisions of P.L.1991, c.208
41 (C.17B:32A-1 et seq.); and

42 (7) provide other information as directed by the commissioner,
43 including, but not limited to, sources for information about the
44 financial condition of member insurers provided that the information
45 is not proprietary and is subject to disclosure under P.L.1963, c.73
46 (C.47:1A-1 et seq.).

1 d. **【No insurer or insurance producer may deliver a policy or**
2 **contract described in subsection b. of section 3 and excluded under**
3 **paragraph (1) of subsection c. of section 3 from coverage under this**
4 **act unless the insurer or insurance producer, prior to or at the time of**
5 **delivery, gives the policy or contract holder a separate written notice**
6 **which clearly and conspicuously discloses that the policy or contract**
7 **is not covered by the association. The commissioner may by rule**
8 **further specify the form and content of the notice】** A member insurer
9 shall retain evidence of compliance with subsection b. of this section
10 for so long as the policy or contract for which the notice is given
11 remains in effect.

12 (cf: P.L.1991, c.208, s.17)

13

14 16. Section 18 of P.L.1991, c.208 (C.17B:32A-18) is amended to
15 read as follows:

16 18. a. A member insurer may offset against its premium tax
17 liability, attributable to premiums written in that year, and
18 determined pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1),
19 any assessments for which a certificate of contribution has been
20 issued, pursuant to subsection h. of section 8 of **【this act】** P.L.1991,
21 c.208 (C.17B:32A-8) to the extent of 10% of the amount of those
22 assessments for each of the five calendar years following the second
23 year after the year in which those assessments were paid, except that
24 no member insurer may offset its premium tax liability by more than
25 20% of its premium tax liability in any one year. If a member insurer
26 should cease doing business in this State, any uncredited assessments
27 may be offset against its premium tax liability for the year in which
28 it ceases to do business in this State.

29 b. **【Any sums which are acquired by member insurers as the**
30 **result of a refund from the association pursuant to subsection f. of**
31 **section 8 of this act, and which have theretofore been offset against**
32 **premium taxes as provided in subsection a. of this section, shall be**
33 **paid by those insurers to the State as the Director of the Division of**
34 **Taxation may require. The association shall notify the commissioner**
35 **and the Director of the Division of Taxation of any refunds made】** A
36 member insurer that is exempt from taxes referenced in subsection a.
37 of this section may recoup its assessments by a surcharge on its
38 premiums or by a surcharge on its membership fees (as applicable)
39 in a sum reasonably calculated to recoup the assessments over a
40 reasonable period of time, as approved by the commissioner.
41 Amounts recouped shall not be considered premiums for any other
42 purpose, including the computation of gross premium tax, the
43 medical loss ratio, or insurance producer commission. If a member
44 insurer collects excess surcharges, the member insurer shall remit the
45 excess amount to the association, and the excess amount shall be
46 applied to reduce future assessments in the appropriate account.

S2422 POU

38

1 insolvencies. Currently, assessments are made against all health
2 insurance companies, even if the company does not sell long-term
3 care insurance, but only those life insurance companies that sell long-
4 term care insurance are assessed.

5 Additionally, this bill sets the cap at \$500,000 on health insurance
6 benefits issued by the guaranty association in cases of insurer
7 impairment or insolvency. This cap is proposed for adjustment based
8 upon changes in the health care costs component of the consumer
9 price index from January 1, 2022, to the date on which the member
10 insurer, as defined in the bill, becomes an insolvent insurer.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2422

STATE OF NEW JERSEY

DATED: MAY 16, 2022

The Senate Commerce Committee reports favorably Senate Bill No. 2422.

This bill updates the “New Jersey Life and Health Insurance Guaranty Association Act” to current standards from the National Association of Insurance Commissioners.

Among the updates in the bill is an expansion of the assessment base that is to cover the insolvencies of long-term care insurers. All life and health insurers will be required to assist in covering these insolvencies. Currently, assessments are made against all health insurance companies, even if the company does not sell long-term care insurance, but only those life insurance companies that sell long-term care insurance are assessed.

Additionally, this bill sets the cap at \$500,000 on health insurance benefits issued by the guaranty association in cases of insurer impairment or insolvency. This cap is proposed for adjustment based upon changes in the health care costs component of the consumer price index from January 1, 2022, to the date on which the member insurer, as defined in the bill, becomes an insolvent insurer.

STATEMENT TO
SENATE, No. 2422

with Assembly Floor Amendments
(Proposed by Assemblyman WIMBERLY)

ADOPTED: JUNE 29, 2022

This floor amendment removes from the bill provisions:

(1) setting a cap of \$500,000 on health insurance benefits issued by the guaranty association in cases of insurer impairment or insolvency, thereby leaving in place the requirement under existing law that these benefits be unlimited;

(2) requiring, for the purposes of the “New Jersey Life and Health Insurance Guaranty Association Act,” benefits provided by a long-term care rider to a life insurance policy or annuity contract to be considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates; and

(3) requiring that dollar amounts allotted by the guaranty association pursuant to the bill increase or decrease based upon changes in the health care costs component of the consumer price index.

ASSEMBLY, No. 3899

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 9, 2022

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Updates “New Jersey Life and Health Insurance Guaranty Association Act” to current standards of National Association of Insurance Commissioners.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the “New Jersey Life and Health Insurance
2 Guaranty Association Act” and amending P.L.1991, c.208.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1991, c.208 (C.17B:32A-2) is amended to
8 read as follows:

9 2. a. The purpose of **[this act]** P.L.1991, c.208 (C.17B:32A-1
10 et seq.) is to protect, subject to certain limitations, those persons
11 specified in subsection a. of section 3 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-1 et seq.) from hardship because of the impairment or
13 insolvency of any member insurer that issued the life **[and]**, health
14 **[insurance policies]**, and annuity policies, plans or contracts
15 specified in subsection b. of section 3 of **[this act]** P.L.1991, c.208
16 (C.17B:32A-1 et seq.).

17 b. To provide this protection, an association of member
18 insurers is created to pay benefits and to continue coverages, as
19 limited by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), and
20 members of the association are subject to assessment to provide
21 funds to carry out the purposes of **[this act]** P.L.1991, c.208
22 (C.17B:32A-1 et seq.).

23 (cf: P.L.1991, c.208, s.2)

24

25 2. Section 3 of P.L.1991, c.208 (C.17B:32A-3) is amended to
26 read as follows:

27 3. a. **[This act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall
28 provide coverage, for the policies and contracts specified in
29 subsection b. of this section, to:

30 (1) persons who, regardless of where they reside (except for
31 nonresident certificate holders under group policies or contracts),
32 are the beneficiaries, assignees or payees, including health care
33 providers rendering services covered under health insurance
34 policies or certificates, of the persons covered under paragraph (2)
35 of this subsection; and

36 (2) persons who are owners of or certificate holders or enrollees
37 under those policies or contracts**[**, or in the case of **]** (other than
38 unallocated annuity contracts, [to the persons who are the contract
39 holders and] and structured settlement annuities) and in each case
40 who:

41 (a) are residents, or

42 (b) are not residents, but only if:

43 (i) the member insurers which issued the policies or contracts
44 are domiciled in this State;

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

Matter underlined thus is new matter.

- 1 (ii) those member insurers, health service corporations, hospital
2 service corporations, medical service corporations, or health
3 maintenance organizations never held a license or certificate of
4 authority in the states in which those persons reside;
- 5 (iii) those states have associations and coverage provisions with
6 respect to residency similar to the association created by **[this act]**
7 P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 8 (iv) those persons are not eligible for coverage by those
9 associations.
- 10 (3) For unallocated annuity contracts specified in subsection b.
11 of this section, paragraphs (1) and (2) of this subsection shall not
12 apply, and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as
13 provided in paragraphs (5) and (6) of this subsection) provide
14 coverage to persons who are the owners of the unallocated annuity
15 contracts:
- 16 (a) if the contracts are issued to or in connection with a specific
17 benefit plan whose plan sponsor has its principal place of business
18 in this State; and
- 19 (b) issued to or in connection with government lotteries if the
20 owners are residents.
- 21 (4) For structured settlement annuities specified in subsection b.
22 of this section, paragraphs (1) and (2) of this subsection shall not
23 apply, and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as
24 provided in paragraphs (5) and (6) of this subsection) provide
25 coverage to a person who is a payee under a structured settlement
26 annuity (or beneficiary of a payee if the payee is deceased) if the
27 payee:
- 28 (a) is a resident, regardless of where the contract owner resides;
29 or
- 30 (b) is not a resident, but only under both of the following
31 conditions:
- 32 (i) the contract owner of the structured settlement annuity is a
33 resident or is not a resident but the insurer that issued the settlement
34 annuity is domiciled in New Jersey and the state in which the
35 contract owner resides has an association similar to the association
36 created by P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 37 (ii) the payee (or beneficiary) and the contract owner are not
38 eligible for coverage by the association of the state in which the
39 payee or contract owner resides.
- 40 (5) P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
41 coverage to a person:
- 42 (a) who is a payee (or beneficiary) of a contract owner resident
43 of this State, if the payee (or beneficiary) is afforded any coverage
44 by the association of another state;
- 45 (b) covered under paragraph (3) of this subsection, if any
46 coverage is provided by the association of another state to the
47 person; or

1 (c) who acquires rights to receive payments through a structured
2 settlement factoring transaction as defined in section 5891 of the
3 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A),
4 regardless of whether the transaction occurred before or after that
5 section became effective.

6 (6) P.L.1991, c.208 (C.17B:32A-1 et seq.) is intended to provide
7 coverage to a person who is a resident of this State and, in special
8 circumstances, to a nonresident. In order to avoid duplicate
9 coverage, if a person who would otherwise receive coverage under
10 P.L.1991, c.208 (C.17B:32A-1 et seq.) is provided coverage under
11 the law of another state, the person shall not be provided coverage
12 under P.L.1991, c.208 (C.17B:32A-1 et seq.). In determining the
13 application of the provisions of this paragraph in situations where a
14 person could be covered by the association of more than one state,
15 whether as an owner, payee, enrollee, beneficiary or assignee,
16 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be construed in
17 conjunction with other state laws to result in coverage by only one
18 association.

19 b. **【This act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall
20 provide coverage to the persons specified in subsection a. of this
21 section for policies or contracts of:

22 (1) direct, non-group life insurance, health insurance (which for
23 the purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.) includes
24 health service corporation contracts, hospital service corporation
25 contracts, medical service corporation contracts, and health
26 maintenance organization subscriber contracts and certificates), or
27 **【annuity】** annuities and supplemental policies or contracts, for
28 certificates under direct group life insurance, health insurance,
29 **【annuity】** annuities and supplemental policies and contracts, for
30 individual and group long-term care insurance policies and
31 contracts, and for unallocated annuity contracts, issued by member
32 insurers, except as limited by **【this act】** P.L.1991, c.208
33 (C.17B:32A-1 et seq.); and

34 (2) policies or contracts issued by medical service corporations
35 declared to be insolvent or impaired by a court of competent
36 jurisdiction on or after September 1, 1987, but prior to the effective
37 date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), except as
38 otherwise limited by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
39 seq.).

40 c. **【This act】** Except as otherwise provided in subsection d. of
41 this section, P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not
42 provide coverage for:

43 (1) any portion of a policy or contract not guaranteed by the
44 member insurer, or under which the risk is borne by the policy or
45 contract **【holder】** owner;

46 (2) any policy or contract of reinsurance, unless assumption
47 certificates have been issued;

- 1 (3) any portion of a policy or contract to the extent that the rate
2 of interest on which it is based:
- 3 (a) averaged over the four-year period prior to the date on which
4 the association becomes obligated with respect to that policy or
5 contract, exceeds the lesser of:
- 6 (i) the rate of interest determined by subtracting three
7 percentage points from Moody's Corporate Bond Yield Average
8 averaged for that same four-year period, or for such lesser period if
9 the policy or contract was issued less than four years before the
10 association became obligated, or
- 11 (ii) the rate of interest specified in the standard valuation law, or
12 the rules of this State for determining the minimum standard for the
13 valuation of policies or contracts issued during the year of
14 insolvency; and
- 15 (b) on and after the date on which the association becomes
16 obligated with respect to that policy or contract, exceeds the rate of
17 interest determined by subtracting four percentage points from
18 Moody's Corporate Bond Yield Average as most recently available;
19 except that the limitation of this paragraph shall not preclude the
20 association from providing more extensive coverage if it is
21 proceeding under the authority of section 7 of **[this act]** P.L.1991,
22 c.208 (C.17B:32A-7);
- 23 (4) any plan or program of an employer, association or similar
24 entity to provide life, health, or annuity benefits to its employees or
25 members to the extent that such plan or program is self-funded or
26 uninsured, including, but not limited to, benefits payable by an
27 employer, association or similar entity under:
- 28 (a) a Multiple Employer Welfare Arrangement as defined in the
29 Employee Retirement Income Security Act of 1974 (29 U.S.C.
30 s.1002);
- 31 (b) a minimum premium group insurance plan;
- 32 (c) a stop-loss group insurance plan; or
- 33 (d) an administrative services only contract;
- 34 (5) any portion of a policy or contract to the extent that it
35 provides dividends or experience rating credits, or provides that any
36 fees or allowances be paid to any person, including the **[holder]**
37 owner of the policy or contract, in connection with the service to or
38 administration of that policy or contract;
- 39 (6) any policy or contract issued in this State by a member
40 insurer at a time when it was not licensed or did not have a
41 certificate of authority to issue that policy or contract in this State;
- 42 (7) any unallocated annuity contract issued to an employee
43 benefit plan covered by the Pension Benefit Guaranty Corporation
44 and whose benefits will be paid under such system; **[and]**
- 45 (8) any portion of any unallocated annuity contract which is not
46 issued to or in connection with a specific plan providing benefits to
47 employees or an association of natural persons;

1 (9) a portion of a policy or contract to the extent it provides for
2 interest or other changes in value to be determined by the use of an
3 index or other external reference stated in the policy or contract, but
4 which has not been credited to the policy or contract, or as to which
5 the policy or contract owner's rights are subject to forfeiture, as of
6 the date the member insurer becomes an impaired or insolvent
7 insurer under P.L.1991, c.208 (C.17B:32A-1 et seq.), whichever is
8 earlier. If a policy or contract's interest or changes in value are
9 credited less frequently than annually, then for purposes of
10 determining the values that have been credited and are not subject
11 to forfeiture under this paragraph, the interest or change in value
12 determined by using the procedures defined in the policy or contract
13 shall be credited as if the contractual date of crediting interest or
14 changing values was the date of impairment or insolvency,
15 whichever is earlier, and shall not be subject to forfeiture;

16 (10) a policy or contract providing any hospital, medical,
17 prescription drug, or other health care benefits pursuant to Medicare
18 Parts C or D or the Medicaid program, 42 U.S.C. ss.1396 et seq.,
19 including the Children's Health Insurance Program (CHIP) which
20 provides health coverage to eligible children, either through
21 Medicaid or separate CHIP programs, or any regulations issued
22 pursuant thereto, or the "Family Health Care Coverage Act,"
23 P.L.2005, c.156 (C.30:40J-8 et seq.), or

24 (11) structured settlement annuity benefits to which a payee (or
25 beneficiary) has transferred rights in a structured settlement
26 factoring transaction as defined pursuant to section 5891 of the
27 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A),
28 regardless of whether the transaction occurred before or after that
29 section became effective.

30 d. The exclusion from coverage referenced in paragraph (3) of
31 subsection c. of this section shall not apply to any portion of a
32 policy or contract, including a rider, that provides a long-term care
33 or any other health insurance benefits.

34 e. The benefits for which the association may become liable
35 shall in no event exceed the lesser of:

36 (1) the contractual obligations for which the member insurer is
37 liable or would have been liable if it were not an impaired or
38 insolvent insurer; or

39 (2) with respect to **any** one **insured individual** life,
40 regardless of the number of policies or contracts:

41 (a) \$500,000 in life insurance death benefits, but not more than
42 \$100,000 in net cash surrender and net cash withdrawal values for
43 life insurance;

44 (b) \$500,000 in present value annuity benefits, including net
45 cash surrender and net cash withdrawal values, but not more than
46 \$100,000 in net cash surrender and net cash withdrawal values for
47 annuity benefits; provided, however, that in no event shall the

1 association be liable to expend more than \$500,000 in the aggregate
2 with respect to any one individual under this paragraph (2); or
3 (3) with respect to any one unallocated annuity contract,
4 \$2,000,000 in benefits; or
5 (4) with respect to any one group, blanket, or individual
6 accident or health insurance or **[group, blanket or individual**
7 **accident or health insurance policy, unlimited benefits]** or health
8 benefit plan, policy or contract:
9 (a) \$500,000 for coverages not defined as disability income
10 insurance, health benefit plans, or long-term care insurance,
11 including any net cash surrender and net cash withdrawal values;
12 (b) \$500,000 for disability income insurance and long-term care
13 insurance; provided, however, that in no event shall the association
14 be liable to expend more than \$500,000 in the aggregate with
15 respect to any one individual under this paragraph; and
16 (c) \$500,000 for health benefit plans; provided, however, that in
17 no event shall the association be liable to expend more than
18 \$500,000 in the aggregate with respect to any one individual under
19 this paragraph;
20 (5) with respect to each individual participating in a
21 overnmental retirement benefit plan established under sections 401,
22 403(b), or 457 of the U.S. Internal Revenue Code, 26 U.S.C. ss.401,
23 403(b), and 457, covered by an unallocated annuity contract or the
24 beneficiaries of each such individual if deceased, in the aggregate,
25 \$500,000 in present value annuity benefits, including net cash
26 surrender and net cash withdrawal values; and
27 (6) with respect to each payee of a structured settlement annuity
28 (or beneficiary or beneficiaries of the payee if deceased), \$500,000
29 in present value annuity benefits, in the aggregate, including net
30 cash surrender and net cash withdrawal values, if any.
31 (7) The limitations set forth in this subsection are limitations on
32 the benefits for which the association is obligated before taking into
33 account either its subrogation and assignment rights or the extent to
34 which those benefits could be provided out of the assets of the
35 impaired or insolvent insurer attributable to covered policies. The
36 costs of the obligation of the association under P.L.1991, c.208
37 (C.17B:32A-1 et seq.) may be met by the use of assets attributable
38 to covered policies or reimbursed to the association pursuant to its
39 subrogation and assignment rights.
40 (8) For purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.),
41 benefits provided by a long-term care rider to a life insurance policy
42 or annuity contract shall be considered the same type of benefits as
43 the base life insurance policy or annuity contract to which it relates.
44 (9) Dollar amounts allotted by the association under this section
45 shall increase or decrease based upon changes in the health care
46 costs component of the consumer price index from January 1, 2022,
47 to the date on which the member insurer becomes an insolvent
48 insurer.

1 **[e.] f.** A provider of health care services, in order to receive
2 payment directly from the association upon a claim of the provider
3 against an insured or enrollee, shall agree to forgive the insured of
4 20% of the obligation which would otherwise be paid by the
5 member insurer had it not been insolvent. The obligations of
6 solvent member insurers to pay all or part of the covered claim are
7 not diminished by the forgiveness provided in this subsection. The
8 association is not bound by an assignment of benefits executed with
9 respect to the coverage provided by the insolvent insurer. The
10 association may aggregate all claims owed health care providers
11 when negotiating direct payment of claims of all covered
12 individuals.

13 (cf: P.L.1991, c.208, s.3)

14

15 3. Section 4 of P.L.1991, c.208 (C.17B:32A-4) is amended to
16 read as follows:

17 4. As used in **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):

18 "Account" means either of the two accounts created under
19 subsection b. of section 5 of **[this act]** P.L.1991, c.208
20 (C.17B:32A-5).

21 "Association" means the New Jersey Life and Health Insurance
22 Guaranty Association created in subsection a. of section 5 of **[this**
23 **act]** P.L.1991, c.208 (C.17B:32A-5).

24 "Benefit plan" means the benefit plan of a specific employee,
25 union or association of natural persons.

26 "Called assessment" or "called" when used in the context of
27 assessments means that a notice has been issued by the association
28 to member insurers requiring that an authorized assessment be paid
29 within the timeframe set forth within the notice. An authorized
30 assessment becomes a called assessment when notice is mailed by
31 the association to member insurers.

32 "Commissioner" means the Commissioner of Banking and
33 Insurance.

34 "Contractual obligation" means any obligation under a policy or
35 contract or certificate under a group policy or contract, or portion
36 thereof, for which coverage is provided under section 3 of **[this act]**
37 P.L.1991, c.208 (C.17B:32A-3), but does not include unearned
38 premium under a health insurance policy or contract.

39 "Covered policy" or "covered contract" means any policy or
40 contract within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-
41 1 et seq.) as provided by section 3 of **[this act]** P.L.1991, c.208
42 (C.17B:32A-3).

43 "Department" means the Department of Banking and Insurance.

44 "Health benefit plan" means any hospital or medical expense
45 policy or certificate, health service corporation contract, hospital
46 service corporation contract, medical service corporation contract,
47 health maintenance organization subscriber contract, or any other
48 similar health contract. "Health benefit plan" does not include

1 accident-only insurance; credit insurance; dental-only insurance;
 2 vision-only insurance; Medicare Supplement income; benefits for
 3 long-term care, home health care, community-based care, or any
 4 combination thereof; liability insurance, including general liability
 5 insurance, or coverage issued as a supplement to liability insurance;
 6 disability income insurance; coverage for on-site medical clinics; or
 7 specified disease, hospital, confinement indemnity, or limited
 8 benefit health insurance if the types of coverage do not provide
 9 coordination of benefits and are provided under separate policies or
 10 certificates.

11 "Impaired insurer" means a member insurer which, after the
 12 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.):
 13 (1) is determined by the commissioner to be potentially unable to
 14 fulfill its contractual obligations; or (2) is placed under an order of
 15 receivership, rehabilitation or conservation by a court of competent
 16 jurisdiction.

17 "Insolvent insurer" means a member insurer which, after the
 18 effective date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.),
 19 is placed under an order of liquidation by a court of competent
 20 jurisdiction with a finding of insolvency.

21 "Member insurer" means any insurer, health service corporation,
 22 hospital service corporation, medical service corporation, or health
 23 maintenance organization licensed in this State or which holds a
 24 certificate of authority to transact any kind of insurance, health
 25 service corporation business, hospital service corporation business,
 26 medical service corporation business, or health maintenance
 27 organization business in this State for which coverage is provided
 28 under section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3), and
 29 includes any insurer, health service corporation, hospital service
 30 corporation, medical service corporation, or health maintenance
 31 organization whose license or certificate of authority in this State
 32 may have been suspended, revoked, not renewed or voluntarily
 33 withdrawn, but does not include:

34 (1) A dental service corporation established pursuant to the
 35 provisions of P.L.1968, c.305 (C.17:48C-1 et seq.);

36 (2) A dental plan organization established pursuant to the
 37 provisions of P.L.1979, c.478 (C.17:48D-1 et seq.);

38 (3) **【A health maintenance organization established pursuant to**
 39 **the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.);】** (Deleted by
 40 amendment, P.L. , c.) (pending before the Legislature as this
 41 bill);

42 (4) A fraternal benefit society established pursuant to the
 43 provisions of P.L.1959, c.167 (C.17:44A-1 et seq.);

44 (5) A mandatory state pooling plan;

45 (6) A mutual assessment company or any entity that operates on
 46 an assessment basis to the extent of the assessment liability of its
 47 members;

48 (7) An insurance exchange; **【or】**

1 (8) A licensed organized delivery system licensed pursuant to
2 P.L.1999, c.409 (C.17:48H-1 et seq.);

3 (9) A captive insurer, established pursuant to P.L.2011, c.25
4 (C.17:47B-1 et seq.); or

5 **[(8)]** (10) An entity similar to any of the above.

6 "Moody's Corporate Bond Yield Average" means the Monthly
7 Average Corporates as published by Moody's Investors Service,
8 Inc., or any successor thereto.

9 "Owner" of a policy or contract and "policyholder," "policy
10 owner," and "contract owner" means the person who is identified as
11 the legal owner under the terms of the policy or contract or who is
12 otherwise vested with legal title to the policy or contract through a
13 valid assignment completed in accordance with the terms of the
14 policy or contract and properly recorded as the owner of the books
15 of the member insurer. The terms owner, contract owner,
16 policyholder, and policy owner do not include persons with a mere
17 beneficial interest in a policy or contract.

18 "Person" means an individual or natural person, corporation,
19 partnership, association or voluntary organization.

20 "Plan sponsor" means:

21 (1) the employer in the case of a benefit plan established or
22 maintained by a single employer;

23 (2) the employee organization in the case of a benefit plan
24 established or maintained by an employee organization; or

25 (3) in a case of a benefit plan established or maintained by two
26 or more employers or jointly by one or more employers and one or
27 more employee organizations, the association, committee, joint
28 board of trustees, or other similar group of representatives of the
29 parties who establish or maintain the benefit plan.

30 "Premiums" means amounts or considerations received in any
31 calendar year on covered policies or contracts less premiums,
32 considerations and deposits returned thereon, and less dividends and
33 experience credits thereon. "Premiums" shall not include any
34 amounts or considerations received for any policies or contracts or
35 for the portions of any policies or contracts for which coverage is
36 not provided under subsection b. of section 3 of **[this act]**
37 P.L.1991, c.208 (C.17B:32A-3) except that assessable premium
38 shall not be reduced as the result of the application of: paragraph
39 (3) of subsection c. of section 3 relating to interest limitations; or
40 paragraph (2) of subsection d. of section 3 relating to limitations
41 with respect to any one insured or enrolled individual. "Premiums"
42 shall not include any premiums in excess of \$2,000,000 per contract
43 on any unallocated annuity contract.

44 "Resident" means a person who resides in this State at the time a
45 member insurer is an impaired insurer or insolvent insurer and to
46 whom a contractual obligation is owed. For the purposes of **[this**
47 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), a person may be a
48 resident of only one state, which in the case of a person other than a

1 natural person shall be its principal place of business. A citizen of
2 the United States that is a resident of a foreign country or of a
3 United States possession, territory, or protectorate that does not
4 have an association similar to the association created by P.L.1991,
5 c.208 (C.17B:32A-1 et seq.) shall be deemed a resident of the state
6 of domicile of the member insurer that issued the policies or
7 contracts.

8 “State” means a state, the District of Columbia, Puerto Rico, and
9 a United States possession, territory, or protectorate.

10 “Structured settlement annuity” means an annuity purchased in
11 order to fund periodic payments for a plaintiff or other claimant in
12 payment for or with respect to personal injury suffered by the
13 plaintiff or other claimant.

14 "Supplemental contract" means an agreement entered into for the
15 distribution of policy or contract proceeds.

16 "Unallocated annuity contract" means: (1) an annuity contract or
17 group annuity certificate which is not issued to and owned by an
18 individual, except to the extent of any annuity benefits guaranteed
19 to an individual by an insurer under that contract or certificate; or
20 (2) any unallocated life insurance or health insurance funding
21 agreement, where insurance certificates or contracts are not issued
22 to and owned by individuals, except to the extent of any life
23 insurance or health insurance benefits guaranteed to an individual
24 by an insurer under such funding agreement.

25 (cf: P.L.1991, c.208, s.4)

26

27 4. Section 5 of P.L.1991, c.208 (C.17B:32A-5) is amended to
28 read as follows:

29 5. a. There is created a nonprofit legal entity to be known as
30 the New Jersey Life and Health Insurance Guaranty Association.
31 All member insurers shall be and remain members of the
32 association as a condition of their authority or license to transact
33 insurance, health service corporation business, hospital service
34 corporation business, medical service corporation business, or
35 health maintenance organization business in this State. Any
36 member insurer shall remain a member insurer for four years after it
37 ceases to hold a certificate of authority or license. The association
38 shall perform its functions under the plan of operation established
39 and approved pursuant to section 9 of **【this act】** P.L.1991, c.208
40 (C.17B:32A-9) and shall exercise its powers through the board of
41 directors established under section 6 of **【this act】** P.L.1991, c.208
42 (C.17B:32A-6). The association shall be under the immediate
43 supervision of the commissioner and shall be subject to the
44 applicable provisions of the insurance laws of this State. Meetings
45 or records of the association may be opened to the public upon
46 majority vote of the board of directors of the association.

47 b. For purposes of administration and assessment the
48 association shall maintain two accounts:

1 (1) The life insurance and annuity account which shall include
2 the following subaccounts:

- 3 (a) life insurance subaccount;
- 4 (b) annuity subaccount; and
- 5 (c) unallocated annuity subaccount.

6 (2) The health **[insurance]** account.

7 (cf: P.L.1991, c.208, s.5)

8

9 5. Section 6 of P.L.1991, c.208 (C.17B:32A-6) is amended to
10 read as follows:

11 6. a. There shall be a board of directors of the association
12 which shall consist of not less than **[five]** seven nor more than
13 **[nine]** eleven member insurers serving terms as established in the
14 plan of operation. The members of the board shall be selected by
15 member insurers subject to the approval of the commissioner.
16 Vacancies on the board shall be filled for the remaining period of
17 the term by a majority vote of the remaining board members,
18 subject to the approval of the commissioner. To select the initial
19 board of directors, and initially organize the association, the
20 commissioner shall give notice to all member insurers of the time
21 and place of the organizational meeting. In determining voting
22 rights at the organizational meeting each member insurer shall be
23 entitled to one vote in person or by proxy. If the board of directors
24 is not selected within 60 days after notice of the organizational
25 meeting, the commissioner may appoint the initial members.

26 b. In approving selections or appointing members to the board,
27 the commissioner shall consider, among other things, whether all
28 member insurers are fairly represented.

29 c. Members of the board may be reimbursed from the assets of
30 the association for reasonable expenses incurred by them as
31 members of the board of directors, but members of the board shall
32 not otherwise be compensated by the association for their services.

33 (cf: P.L.1991, c.208, s.6)

34

35 6. Section 7 of P.L.1991, c.208 (C.17B:32A-7) is amended to
36 read as follows:

37 7. a. If a member insurer is an impaired **[domestic]** insurer,
38 the association may, in its discretion, and subject to any conditions
39 imposed by the association that do not unreasonably impair the
40 contractual obligations of the impaired insurer, that are approved by
41 the commissioner~~],~~ and that are, except in cases of court ordered
42 receivership, conservation or rehabilitation, also approved by the
43 impaired insurer~~]~~:

44 (1) guaranty, assume, reissue, or reinsure, or cause to be
45 guaranteed, assumed, reissued, or reinsured, any or all of the
46 policies or contracts of the impaired insurer;

47 (2) provide such monies, pledges, notes, guarantees, or other
48 means as are proper to effectuate the provisions of paragraph (1) of

1 this subsection and assure payment of the contractual obligations of
2 the impaired insurer pending action under paragraph (1); or

3 (3) loan money to the impaired insurer.

4 b. [(1) If a member insurer is an impaired insurer, whether
5 domestic, foreign or alien, and the insurer is not paying claims in a
6 timely manner, then subject to the preconditions specified in
7 paragraph (2) of this subsection, the association shall, in its
8 discretion, either:

9 (a) take any of the actions specified in subsection a. of this
10 section, subject to the conditions therein; or

11 (b) provide substitute benefits in lieu of the contractual
12 obligations of the impaired insurer solely for health insurance
13 claims, periodic annuity benefit payments, death benefits,
14 supplemental benefits, and cash withdrawals for policy or contract
15 owners who petition therefor under claims of emergency or
16 hardship in accordance with standards proposed by the association
17 and approved by the commissioner.

18 (2) The association shall be subject to the requirements of
19 paragraph (1) of this subsection only if:

20 (a) the laws of the impaired insurer's state or country of
21 domicile provide that, until all payments of, or on account of, the
22 impaired insurer's contractual obligations by all guaranty
23 associations, along with all expenses thereof and interest on all such
24 payments and expenses, shall have been repaid to the guaranty
25 associations or a plan of repayment by the impaired insurer shall
26 have been approved by the guaranty associations,

27 (i) the delinquency proceeding shall not be dismissed,

28 (ii) neither the impaired insurer nor its assets shall be returned to
29 the control of its shareholders or private management, and

30 (iii) it shall not be permitted to solicit or accept new business or
31 have any suspended or revoked license restored; and

32 (b) (i) in the case of a domestic insurer, it has been placed under
33 an order of receivership or rehabilitation by a court of competent
34 jurisdiction in this State, or

35 (ii) in the case of a foreign or alien insurer, it has been
36 prohibited from soliciting or accepting new contracts in this State,
37 except as approved by the commissioner and as part of a plan of
38 rehabilitation approved by a court of competent jurisdiction.

39 (3) (a) The limitations of paragraphs (3) and (4) of subsection c.
40 of section 3 of this act shall not preclude the association from
41 providing more extensive coverage or guarantees, if it is proceeding
42 under the authority of this section and if that additional coverage is
43 an essential element in allowing a rehabilitation plan to succeed as
44 determined by the commissioner and a court of competent
45 jurisdiction.

46 (b) The commissioner and the association shall utilize the
47 authority of this section if a reasonable prospect exists that the
48 ultimate liabilities to be paid by the association and its member

1 insurers will be reduced as compared to the present liabilities
2 incurred if the association were to proceed under paragraph (2) of
3 subsection d. of section 3 of this act.

4 (c) In proceeding under paragraph (1) of subsection b. of this
5 section, without limitation on any authority or right of the
6 association under this act or any right of contract, the association
7 may enter into agreements with other guaranty associations to
8 secure coordination between associations and performance by those
9 associations with respect to policy or contract holders covered by
10 those associations equivalent to that provided to individuals covered
11 by this act.

12 (d) In proceeding under paragraph (1) of subsection b. of this
13 section, any funds actually expended by a member insurer for
14 benefits received by a person covered by this act, which were
15 subject to a plan of rehabilitation approved by the commissioner
16 and a court of competent jurisdiction, shall qualify as an assessment
17 under section 8 of this act after a final accounting.

18 (e) When the association is proceeding under paragraph (1) of
19 subsection b. of this section, the court shall authorize the
20 establishment of liens upon policy and contract holder cash
21 surrender values and cash withdrawal values limiting the ability of
22 policy and contract holders to withdraw deposits, surrender their
23 policies or contracts and receive the net cash surrender values and
24 net cash withdrawal values, for a term of not less than three nor
25 more than five years. The court, in establishing liens upon cash
26 surrender values or cash withdrawal values, shall approve such liens
27 upon the motion of the receiver as are necessary to enable the
28 impaired insurer to meet its death and disability claims and fund the
29 necessary operating expenses associated with its receivership to the
30 greatest extent possible with the available assets of the impaired
31 insurer within the time period covered by rehabilitation plan. The
32 standard to be applied by the court with respect to preferential
33 treatment is that all options offered to policy and contract holders
34 must represent the same pro rata claim on the general account assets
35 of the impaired insurer and be actuarially equivalent in present
36 value terms at the time they are approved. ~~(Deleted by~~
37 ~~amendment, P.L. , c.) (pending before the Legislature as this~~
38 ~~bill);~~

39 c. If a member insurer is an insolvent insurer, the association
40 shall, in its discretion, either:

41 (1) (a) guaranty, assume, reissue, or reinsure, or cause to be
42 guaranteed, assumed, reissued, or reinsured, the policies or
43 contracts of the insolvent insurer; or

44 (b) assure payment of the contractual obligations of the
45 insolvent insurer; and

46 (c) provide those monies, pledges, guarantees, or other means as
47 are reasonably necessary to discharge those obligations; or

- 1 (2) with respect only to **life and health insurance** policies or
2 contracts, provide benefits and coverages in accordance with
3 subsection d. of this section.
- 4 d. When proceeding under **subparagraph (b) of paragraph (1)**
5 **of subsection b. or** paragraph (2) of subsection c. of this section,
6 the association shall, with respect only to **life and health**
7 **insurance** policies or contracts:
- 8 (1) assure payment of benefits **for premiums identical to the**
9 **premiums and benefits, except for terms of conversion and**
10 **renewability,** that would have been payable under the policies or
11 contracts of the impaired or insolvent insurer, for claims incurred:
- 12 (a) with respect to group policies or contracts, not later than the
13 earlier of the next renewal date under those policies or contracts or
14 45 days, but in no event less than 30 days, after the date on which
15 the association becomes obligated with respect to those policies or
16 contracts;
- 17 (b) with respect to individual policies or contracts, not later than
18 the earlier of the next renewal date, if any, under those policies or
19 contracts or one year, but in no event less than 30 days, from the
20 date on which the association becomes obligated with respect to
21 those policies or contracts;
- 22 (2) make a diligent effort to provide all known insureds,
23 enrollees, annuitants, or group **policyholders** policy or contract
24 owners with respect to group policies or contracts, 30 days' notice
25 of the termination of the benefits provided; and
- 26 (3) with respect to individual policies or contracts, and with
27 respect to individuals formerly an insured, enrollee, or annuitant
28 under group policies or contracts who are not eligible for
29 replacement group coverage, make available to each known insured,
30 enrollee, annuitant, or policy or contract owner of an individual
31 policy or contract if other than the insured, enrollee, or annuitant
32 substitute coverage on an individual basis in accordance with the
33 provisions of paragraph (4) of this subsection, if the insured,
34 enrollee, or annuitant had a right under law or the terminated policy
35 **or**, contract or annuity to convert coverage to individual coverage
36 or to continue an individual policy **or**, contract, or annuity in
37 force until a specified age or for a specified time, during which the
38 member insurer, health service corporation, hospital service
39 corporation, medical service corporation, or health maintenance
40 organization had no right unilaterally to make changes in any
41 provision of the policy **or**, contract, or annuity or had a right only
42 to make changes in premium by class.
- 43 (4) (a) In providing the substitute coverage required by
44 paragraph (3), the association may offer either to reissue the
45 terminated coverage or to issue an alternative policy or contract at
46 actuarially justified rates.

1 (b) Alternative or reissued policies or contracts shall be offered
2 without requiring evidence of insurability, and shall not provide for
3 any waiting period or exclusion that would not have applied under
4 the terminated policy or contract.

5 (c) The association may reinsure any alternative or reissued
6 policy or contract.

7 (5) (a) Alternative policies or contracts adopted by the
8 association shall be subject to the approval of the commissioner.

9 (b) Alternative policies or contracts shall contain at least the
10 minimum statutory provisions required in this State and provide
11 benefits that shall not be unreasonable in relation to the premium
12 charged under reasonable actuarial assumptions. The association
13 shall set the premium in accordance with a table of rates which it
14 shall adopt. The premium shall reflect the amount of insurance or
15 coverage to be provided and the age and class of risk of each
16 insured or enrollee.

17 (c) Any alternative policy or contract issued by the association
18 shall provide coverage of a type similar to that of the policy or
19 contract issued by the impaired or insolvent insurer, as determined
20 by the association.

21 (6) If the association elects to reissue terminated coverage at a
22 premium rate different from that charged under the terminated
23 policy or contract, the premium shall be actuarially justified and set
24 by the association in accordance with the amount of insurance or
25 coverage provided and the age and class of risk, subject to approval
26 of the commissioner.

27 (7) The association's obligations with respect to coverage under
28 any policy or contract of the impaired or insolvent insurer or under
29 any reissued or alternative policy or contract shall cease on the date
30 that coverage, policy or contract is replaced by another similar
31 coverage, policy or contract by the 【policyholder】 policy or
32 contract owner, the enrollee, the association, or the insured.

33 e. When proceeding under 【subparagraph (b) of paragraph (1)
34 of subsection b. or】 subsection c. of this section with respect to any
35 policy or contract carrying guaranteed minimum interest rates, the
36 association shall assure the payment or crediting of a rate of interest
37 at least equal to that specified in paragraph (3) of subsection c. of
38 section 3 of 【this act】 P.L.1991, c.208 (C.17B:32A-3).

39 f. Nonpayment of premiums within 31 days after the date
40 required, after effective notice shall have been given of the terms of
41 any guaranteed, assumed, alternative or reissued policy or contract
42 or substitute coverage, shall terminate the association's obligations
43 under that policy, contract or coverage under 【this act】 P.L.1991,
44 c.208 (C.17B:32A-1 et seq.) with respect to that policy, contract or
45 coverage, except with respect to any claims incurred or any net cash
46 surrender value which may be due in accordance with the
47 provisions of 【this act】 P.L.1991, c.208 (C.17B:32A-1 et seq.).

- 1 g. Premiums due for coverage after entry of an order of
2 receivership or liquidation of any insolvent insurer shall belong to,
3 and be payable at the direction of, the association.
- 4 h. The protection provided by **【this act】** P.L.1991, c.208
5 (C.17B:32A-1 et seq.) shall not apply if any guaranty protection is
6 provided to residents of this State by the law of the domiciliary
7 state or jurisdiction of the impaired or insolvent insurer other than
8 this State.
- 9 i. In carrying out its duties under subsections b. and c. of this
10 section, the association may, subject to approval by the court:
- 11 (1) impose reasonable and necessary policy or contract liens in
12 connection with any guaranty, assumption or reinsurance
13 agreement, if the association finds that the amounts which can be
14 assessed under this act are less than the amounts needed to assure
15 full and prompt performance of the association's duties under **【this**
16 **act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), or that the economic or
17 financial conditions as they affect member insurers are sufficiently
18 adverse to render the imposition of those policy or contract liens, to
19 be in the public interest; or
- 20 (2) impose temporary moratoriums or liens on payments of cash
21 values and policy loans, or any other right to withdraw funds held
22 in conjunction with policies or contracts, in addition to any
23 contractual provisions for deferral of cash or policy loan value.
- 24 j. If the association fails to act within a reasonable period of
25 time as provided in **【subparagraph (b) of paragraph (1) of**
26 **subsection b. and】** subsections b. and c. **【and d.】** of this section, the
27 commissioner shall have the powers and duties of the association
28 provided by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) with
29 respect to impaired or insolvent insurers.
- 30 k. The association may render assistance and advice to the
31 commissioner concerning the receivership, conservation,
32 rehabilitation, liquidation, payment of claims, continuance of
33 coverage, or the performance of other contractual obligations of any
34 impaired or insolvent insurer.
- 35 l. The association shall have standing to appear before any
36 court in this State with jurisdiction over an impaired or insolvent
37 insurer with respect to which the association is or may become
38 obligated under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
39 That standing shall extend to all matters germane to the powers and
40 duties of the association, including, but not limited to, proposals for
41 reinsuring, reissuing, modifying or guaranteeing the policies or
42 contracts of the impaired or insolvent insurer and the termination of
43 the policies or contracts and contractual obligations. The
44 association shall also have the right to appear or intervene before a
45 court in another state with jurisdiction over an impaired or insolvent
46 insurer for which the association is or may become obligated or
47 with jurisdiction over **【a third party】** any person or property against

1 whom the association may have rights through subrogation **【of the**
2 insurer's policyholders**】** or otherwise.

3 m. (1) Any person receiving benefits under **【this act】** P.L.1991,
4 c.208 (C.17B:32A-1 et seq.) shall be deemed to have assigned the
5 rights under, and any causes of action relating to, the covered policy
6 or contract to the association to the extent of the benefits received
7 pursuant to **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.),
8 whether the benefits are payments of or on account of contractual
9 obligations, continuation of coverage or provision of substitute or
10 alternative policies, contracts, or coverages. The association may
11 require an assignment to it of such rights and causes of action by
12 any payee, policy or contract owner, beneficiary, insured, enrollee,
13 or annuitant as a condition precedent to the receipt of any right or
14 benefits conferred by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et
15 seq.) upon that person.

16 (2) The subrogation rights of the association under this
17 subsection shall have the same priority against the assets of the
18 impaired or insolvent insurer as that possessed by the person
19 entitled to receive benefits under **【this act】** P.L.1991, c.208
20 (C.17B:32A-1 et seq.).

21 (3) In addition to the rights of subrogation contained in
22 paragraphs (1) and (2) of this subsection, the association shall have
23 all common law rights of subrogation and any other equitable or
24 legal remedy which would have been available to the impaired or
25 insolvent insurer or **【holder of a】** policy or contract owner,
26 beneficiary, enrollee, or payee with respect to that policy or
27 contract.

28 (4) In addition to the rights contained in paragraphs (1), (2) and
29 (3) of this subsection, in the case of any unallocated annuity
30 contract for which benefits are paid by the association under **【this**
31 **act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
32 deemed to have assigned to it the rights and causes of action of any
33 employee or association of natural persons against the contract
34 **【holder】** owner of such unallocated annuity contract for the
35 amounts paid by the association under **【this act】** P.L.1991, c.208
36 (C.17B:32A-1 et seq.).

37 (5) If the preceding provisions of this subsection are invalid or
38 ineffective with respect to any person or claim for any reason, the
39 amount payable by the association with respect to the related
40 covered obligations shall be reduced by the amount realized by any
41 other person with respect to the person or claim that is attributable
42 to the policies or contracts (or portion thereof) covered by the
43 association.

44 (6) If the association has provided benefits with respect to a
45 covered obligation and a person recovers amounts as to which the
46 association has rights as described in the preceding paragraphs of
47 this subsection, the person shall pay to the association the portion of

1 the recovery attributable to the policies or contracts (or portion
2 thereof) covered by the association.

3 n. The association may:

4 (1) enter into any contracts necessary or proper to carry out the
5 provisions and purposes of **【this act】** P.L.1991, c.208 (C.17B:32A-
6 1 et seq.);

7 (2) sue or be sued, including taking any legal actions necessary
8 or proper to recover any unpaid assessments imposed pursuant to
9 section 8 of **【this act】** P.L.1991, c.208 (C.17B:32A-8) and to settle
10 claims or potential claims against it;

11 (3) borrow money to effectuate the purposes of **【this act】**
12 P.L.1991, c.208 (C.17B:32A-1 et seq.). Any notes or other evidence
13 of indebtedness of the association not in default shall be legal
14 investments for domestic insurers and may be carried as admitted
15 assets;

16 (4) employ or retain persons necessary to handle the financial
17 transactions of the association, and to perform other functions as are
18 necessary or proper under **【this act】** P.L.1991, c.208 (C.17B:32A-1
19 et seq.);

20 (5) take any legal action necessary to avoid payment of
21 improper claims;

22 (6) exercise, for the purposes of **【this act】** P.L.1991, c.208
23 (C.17B:32A-1 et seq.) and to the extent approved by the
24 commissioner, the powers of a domestic life insurer or health
25 insurer, health service corporations, hospital service corporations,
26 medical service corporations, or health maintenance organizations
27 but in no case shall the association issue insurance policies or
28 annuity contracts other than those issued to perform its obligations
29 under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.);

30 (7) organize itself as a corporation or in other legal form
31 permitted by the law of the State;

32 (8) request information from a person seeking coverage from the
33 association in order to aid the association in determining its
34 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.) with
35 respect to the person, and the person shall promptly comply with
36 the request;

37 (9) unless prohibited by law, in accordance with the terms and
38 conditions of the policy or contract, file for actuarially justified rate
39 or premium increases for any policy or contract for which it
40 provides coverage under P.L.1991, c.208 (C.17B:32A-1 et seq.);
41 and

42 (10) take other necessary or appropriate action to discharge its
43 duties and obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.)
44 or to exercise its powers under P.L.1991, c.208 (C.17B:32A-1 et
45 seq.).

46 o. The association may join an organization of one or more
47 other state associations of similar purposes, to further the purposes
48 and administer the powers and duties of the association.

1 p. (1) (a) At any time within 180 days of the date of the order
2 of liquidation, the association may elect to succeed to the rights and
3 obligations of the ceding member insurer that relate to policies,
4 contracts, or annuities covered, in whole or in part, by the
5 association, in each case under any one or more reinsurance
6 contracts entered into by the insolvent insurer and its reinsurers and
7 selected by the association. Any such assumption shall be effective
8 as of the date of the order of liquidation. The election shall be
9 effected by the association or the National Organization of Life and
10 Health Insurance Guaranty Associations (NOLGHA) on its behalf
11 sending written notice, return receipt requested, to the affected
12 reinsurers.

13 (b) To facilitate the earliest practicable decision about whether
14 to assume any of the contracts of reinsurance, and in order to
15 protect the financial positions of the estate, the receiver and each
16 reinsurer of the ceding member insurer shall make available upon
17 request to the association or the NOLGHA on its behalf as soon as
18 possible after commencement of formal delinquency proceedings:

19 (i) copies of in-force contracts of reinsurance and all related
20 files and records relevant to the determination of whether such
21 contracts should be assumed; and

22 (ii) notices of any defaults under the reinsurance contracts or
23 any known event or condition which with the passage of time could
24 become a default under the reinsurance contracts.

25 (c) The following subparagraphs shall apply to reinsurance
26 contracts so assumed by the association:

27 (i) The association shall be responsible for all unpaid premiums
28 due under the reinsurance contracts for periods both before and
29 after the date of the order of liquidation, and shall be responsible for
30 the performance of all other obligations to be performed after the
31 date of the order of liquidation, in each case which relate to
32 policies, contracts, or annuities covered, in whole or in part, by the
33 association. The association may charge policies, contracts, or
34 annuities covered in part by the association, through reasonable
35 allocation methods, the costs for reinsurance in excess of the
36 obligations of the association and shall provide notice and an
37 accounting of these charges to the liquidator;

38 (ii) The association shall be entitled to any amounts payable by
39 the reinsurer under the reinsurance contracts with respect to losses
40 or events that occur in periods after the date of the order of
41 liquidation and that relate to policies, contracts, or annuities
42 covered, in whole or in part, by the association, provided that, upon
43 receipt of those amounts, the association shall be obliged to pay to
44 the beneficiary under the policy, contracts, or annuity on account of
45 which the amounts were paid a portion of the amount equal to the
46 lesser of (1) the amount received by the association; and (2) the
47 excess of the amount received by the association over the amount
48 equal to the benefits paid by the association on account of the

1 policy, contracts, or annuity less the retention of the insurer
2 applicable to the loss or event.

3 (iii) Within 30 days following the association's election (the
4 "election date"), the association and each reinsurer under contracts
5 assumed by the association shall calculate the net balance due to or
6 from the association under each reinsurance contract as of the
7 election date with respect to policies, contracts or annuities covered,
8 in whole or in part, by the association, which calculation shall give
9 full credit to all items paid by either the member insurer or its
10 receiver or the reinsurer prior to the election date. The reinsurer
11 shall pay the receiver any amounts due for losses or events prior to
12 the date of the order of liquidation, subject to any set-off for
13 premiums unpaid for periods prior to the date, and the association
14 or reinsurer shall pay any remaining balance due the other, in each
15 case within five days of the completion of the aforementioned
16 calculation. Any disputes over the amounts due to either the
17 association or the reinsurer shall be resolved by arbitration pursuant
18 to the terms of the affected reinsurance contracts or, if the contract
19 contains no arbitration clause, as otherwise provided by law. If the
20 receiver has received any amounts due the association pursuant to
21 subsubparagraph (ii) of this subparagraph, the receiver shall remit
22 the same to the association as promptly as practicable.

23 (iv) If the association or receiver, on the association's behalf,
24 within 60 days of the election date, pays the unpaid premiums due
25 for periods both before and after the election date that relate to
26 policies, contracts, or annuities covered, in whole or in part, by the
27 association, the reinsurer shall not be entitled to terminate the
28 reinsurance contracts for failure to pay premium insofar as the
29 reinsurance contracts relate to policies, contracts, or annuities
30 covered, in whole or in part, by the association, and shall not be
31 entitled to set off any unpaid amounts due under other contracts, or
32 unpaid amounts due from parties other than the association, against
33 amounts due the association.

34 (2) During the period from the date of the order of liquidation
35 until the election date (or, if the election date does not occur, until
36 180 days after the date of the order of liquidation):

37 (a) (i) the association and the reinsurer shall not have rights or
38 obligations under reinsurance contracts that the association has the
39 right to assume under paragraph (1) of this subsection, whether for
40 period prior to or after the date of the order of liquidation; and

41 (ii) the reinsurer, the receiver and the association shall, to the
42 extent, practicable, provide each other data and records reasonably
43 requested.

44 (b) provided that once the association has elected to assume a
45 reinsurance contract, the parties' rights and obligations shall be
46 governed paragraph (1) of this subsection.

47 (3) If the association does not elect to assume a reinsurance
48 contract by the election date pursuant to paragraph (1) of this

1 subsection, the association shall have no rights or obligations, in
2 each case for periods both before and after the date of the order of
3 liquidation, with respect to the reinsurance contract.

4 (4) When policies, contracts, or annuities, or covered
5 obligations with respect thereto, are transferred to an assuming
6 insurer, reinsurance on the policies, contracts, or annuities may also
7 be transferred by the association, in the case of contracts assumed
8 under paragraph (1) of this subsection, subject to the following:

9 (a) unless the reinsurer and the assuming insurer agree
10 otherwise, the reinsurance contract transferred shall not cover any
11 new policies of insurance, contracts, or annuities in addition to
12 those transferred;

13 (b) the obligations described in paragraph (1) of this subsection
14 shall no longer apply with respect to matters arising after the
15 effective date of the transfer; and

16 (c) notice shall be given in writing, return receipt requested, by
17 the transferring party to the affected reinsurer not less than 30 days
18 prior to the effective date of the transfer.

19 (5) The provisions of this subsection shall supersede the
20 provisions of any State law or any affected reinsurance contract that
21 provides for or requires any payment of reinsurance proceeds, on
22 account of losses or events that occur in periods after the date of the
23 order of liquidation, to the receiver of the insolvent insurer or any
24 other person. The receiver shall remain entitled to any amounts
25 payable by the reinsurer under the reinsurance contracts with
26 respect to losses or events that occur in periods prior to the date of
27 the order of liquidation, subject to applicable setoff provisions.

28 (6) Except as otherwise provided in this subsection, nothing in
29 this subsection shall alter or modify the terms and conditions of any
30 reinsurance contract. Nothing in this subsection shall abrogate or
31 limit any rights of any reinsurer to claim that it is entitled to rescind
32 a reinsurance contract. Nothing in this subsection shall give a
33 policyholder, contract owner, enrollee, certificate holder, or
34 beneficiary an independent cause of action against a reinsurer that is
35 not otherwise set forth in the reinsurance contract. Nothing in this
36 subsection shall limit or affect the association's rights as a creditor
37 of the estate against the assets of the estate. Nothing in this
38 subsection shall apply to reinsurance agreements covering property
39 or casualty risks.

40 q. The board of directors of the association shall have
41 discretion and may exercise reasonable business judgment to
42 determine the means by which the association is to provide the
43 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) in an economical
44 and efficient manner.

45 r. Where the association has arranged or offered to provide the
46 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) to a covered
47 person under a plan or arrangement that fulfills the association's
48 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.), the person

1 shall not be entitled to benefits from the association in addition to
2 or other than those provided under the plan or arrangement.

3 s. Venue in a suit against the association arising under
4 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be in Monmouth
5 County. The association shall not be required to give an appeal
6 bond in an appeal that relates to a cause of action arising under
7 P.L.1991, c.208 (C.17B:32A-1 et seq.).

8 t. In carrying out its duties in connection with guaranteeing,
9 assuming, reissuing, or reinsuring policies or contracts under
10 subsections a., b., c, or d. of this section, the association may issue
11 substitute coverage for a policy or contract that provides an interest
12 rate, crediting rate or similar factor determined by use of an index
13 or other external reference stated in the policy or contract employed
14 in calculating returns or changes in value by issuing an alternative
15 policy or contract in accordance with the following provisions:

16 (1) in lieu of the index or external reference provided for in the
17 original policy or contract, the alternative policy or contract
18 provides for a fixed interest rate; payment of dividends with
19 minimum guarantees; or a different method for calculating interest
20 or changes in value;

21 (2) there is no requirement for evidence of insurability, waiting
22 period or other exclusion that would not have applied under the
23 replaced policy or contract; and

24 (3) the alternative policy or contract is substantially similar to
25 the replaced policy or contract in all other material terms.

26 u. A deposit in this State, held pursuant to law or required by the
27 commissioner for the benefit of creditors, including policy or
28 contract owners, not turned over to the domiciliary liquidator upon
29 the entry of a final order of liquidation or order approving a
30 rehabilitation plan of a member insurer domiciled in this State or in
31 a reciprocal state pursuant to section 57 of P.L.1992, c.65
32 (C.17B:32-87) shall be promptly paid to the association. The
33 association shall be entitled to retain a portion of any amount so
34 paid to it equal to the percentage determined by dividing the
35 aggregate amount of policy or contract owners' claims related to
36 that insolvency for which the association has provided statutory
37 benefits by the aggregate amount of all policy or contract owners'
38 claims in the State related to that insolvency and shall remit to the
39 domiciliary receiver the amount so paid to the association less the
40 amount retained pursuant to this subsection. Any amount so paid to
41 the association and retained by it shall be treated as a distribution of
42 estate assets pursuant to applicable State receivership law dealing
43 with early access disbursements.

44 (cf: P.L.1991, c.208, s.7)

45

46 7. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to
47 read as follows:

1 8. a. For the purpose of providing the funds necessary to carry
2 out the powers and duties of the association, the board of directors
3 shall assess the member insurers, separately for each account, at
4 such time and for such amounts as the board finds necessary.
5 Assessments shall be due not less than 30 days after prior written
6 notice to the member insurers and shall accrue interest at the
7 percentage of interest prescribed in the Rules Governing the Courts
8 of the State of New Jersey for judgments, awards and orders for the
9 payment of money, on and after the due date.

10 b. There shall be two classes of assessments, as follows:

11 (1) Class A assessments shall be made for the purpose of
12 meeting administrative and legal costs of the association which are
13 not objected to by the commissioner and other expenses [and
14 examinations conducted under the authority of subsection e. of
15 section 11 of this act]. Class A assessments shall also be made,
16 upon the request of the commissioner, for the purpose of meeting
17 costs incurred by or on behalf of the department in the
18 administration of an insolvent insurer to the extent those costs
19 exceed assets of the insolvent insurer available for that purpose.
20 Class A assessments need not be related to a particular impaired or
21 insolvent insurer. The amount of any Class A assessment shall be
22 determined by the board.

23 (2) Class B assessments shall be made to the extent necessary to
24 carry out the powers and duties of the association under section 7 of
25 [this act] P.L.1991, c.208 (C.17B:32A-7) with respect to an
26 impaired or an insolvent insurer. The amount of any Class B
27 assessment, except for assessments related to long-term care
28 insurance, shall be allocated for assessment purposes [among]
29 between the accounts and among subaccounts of the life insurance
30 and annuity account, pursuant to an allocation formula which may
31 be based on the premiums or reserves of the impaired or insolvent
32 insurer or any other standard deemed by the board in its sole
33 discretion as being fair and reasonable under the circumstances.

34 (3) The amount of Class B assessments for long-term care
35 insurance written by the impaired or insolvent insurer shall be
36 allocated according to a methodology included in the plan of
37 operation and approved by the commissioner. The methodology
38 shall provide for 50 percent of the assessment to be allocated to
39 accident and health member insurers and 50 percent to be allocated
40 to life and annuity member insurers.

41 c. (1) Class B assessments against member insurers for each
42 account and subaccount shall be in the proportion that the premiums
43 received on business in this State by each assessed member insurer
44 on policies or contracts covered by each account for the three most
45 recent calendar years for which information is available preceding
46 the year in which the member insurer became impaired or insolvent,
47 as the case may be, bears to such premiums received on business in
48 this State for such calendar years by all assessed member insurers.

1 (2) Assessments for funds to meet the requirements of the
2 association with respect to an impaired or insolvent insurer shall be
3 made as necessary to implement the purposes of **[this act]**
4 P.L.1991, c.208 (C.17B:32A-1 et seq.). Classification of
5 assessments under subsection b. of this section and computation of
6 assessments under this subsection c. shall be made with a
7 reasonable degree of accuracy, recognizing that exact
8 determinations may not always be possible.

9 d. The association shall **[exempt,]** abate or defer, in whole or
10 in part, the assessment of a member insurer if, in the opinion of the
11 commissioner, payment of the assessment would endanger the
12 ability of the member insurer to fulfill its contractual obligations or
13 places the member insurer in an unsafe or unsound financial
14 condition. In the event an assessment against a member insurer is
15 **[exempted,]** abated or deferred, in whole or in part, the amount by
16 which that assessment is **[exempted,]** abated or deferred shall be
17 assessed against the other member insurers in a manner consistent
18 with the basis for assessments set forth in this section. Once the
19 conditions that caused a deferral have been removed or rectified, the
20 member insurer shall pay all assessments that were deferred
21 pursuant to a repayment plan approved by the commissioner.

22 e. (1) The total of all assessments imposed under subsection b.
23 of this section upon a member insurer for the life insurance and
24 annuity account and for each subaccount thereunder shall not in any
25 one calendar year exceed two percent and for the health **[insurance]**
26 account shall not in any one calendar year exceed two percent of
27 that member insurer's average premiums, as reported in the annual
28 statement in a form prescribed by the commissioner, received in this
29 State on the policies and contracts covered by the account during
30 the three calendar years preceding the year in which the member
31 insurer became an impaired or insolvent insurer. If the maximum
32 assessment, together with the other assets of the association in any
33 account, does not provide in any one year in either account an
34 amount sufficient to carry out the responsibilities of the association,
35 the necessary additional funds shall be assessed as soon thereafter
36 as permitted by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.)

37 (2) If a one percent assessment for any subaccount of the life
38 insurance and annuity account in any one year does not provide an
39 amount sufficient to carry out the responsibilities of the association,
40 then pursuant to paragraph (1) of subsection c. of this section, the
41 board shall assess all subaccounts of the life insurance and annuity
42 account for the necessary additional amount, subject to the
43 maximum stated in paragraph (1) of this subsection.

44 (3) The board may provide in the plan of operation a method of
45 allocating funds among claims, whether relating to one or more
46 impaired or insolvent insurers, when the maximum assessment will
47 be insufficient to cover anticipated claims.

1 f. The board may, by an equitable method as established in the
2 plan of operation, refund to member insurers, in proportion to the
3 contribution of each member insurer to that account, the amount by
4 which the assets of an account exceed the amount the board, with
5 the concurrence of the commissioner, finds is necessary to carry out
6 during the coming year the obligations of the association with
7 respect to that account, including assets accruing from assignment,
8 subrogation, net realized gains and income from investments. A
9 reasonable amount may be retained in any account to provide funds
10 for the continuing expenses of the association and for future losses.

11 g. Except for that portion of assessments **[which]** that may be
12 offset against premium taxes pursuant to section 18 of **[this act]**
13 P.L.1991, c.208 (C.17B:32A-18), it shall be proper for any member
14 insurer, in determining its premium rates and policy owner
15 dividends as to any kind of insurance, health service corporation
16 business, hospital service corporation business, medical service
17 corporation business, or health maintenance organization business
18 within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
19 seq.), to consider the amount reasonably necessary to meet its
20 assessment obligations under **[this act]** P.L.1991, c.208
21 (C.17B:32A-1 et seq.).

22 h. The association shall issue to each member insurer paying an
23 assessment pursuant to **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
24 seq.), other than a Class A assessment, a certificate of contribution,
25 in a form and manner prescribed by the commissioner, for the
26 amount of the assessment so paid. All outstanding certificates shall
27 be of equal dignity and priority without reference to amount or date
28 of issue. A certificate of contribution may be shown by the member
29 insurer in its financial statement as an asset in such form and
30 manner and for such amount and period of time as the
31 commissioner may approve.

32 i. (1) A member insurer that wishes to protest all or part of an
33 assessment shall pay when due the full amount of the assessment as
34 set forth in the notice provided by the association. The payment
35 shall be available to meet association obligations during the
36 pendency of the protest or any subsequent appeal. Payment shall be
37 accompanied by a statement in writing that the payment is made
38 under protest and setting forth a brief statement of the grounds for
39 the protest.

40 (2) Within 60 days following the payment of an assessment
41 under protest by a member insurer, the association shall notify the
42 member insurer in writing of its determination with respect to the
43 protest unless the association notifies the member insurer that
44 additional time is required to resolve the issues raised by the
45 protest.

46 (3) Within 30 days after a final decision has been made, the
47 association shall notify the protesting member insurer in writing of
48 that final decision. Within 60 days of receipt of notice of the final

1 decision, the protesting member insurer may appeal that final action
2 to the commissioner.

3 (4) In the alternative to rendering a final decision with respect to
4 a protest based on a question regarding the assessment base, the
5 association may refer protests to the commissioner for a final
6 decision, with or without a recommendation from the association.

7 (5) If the protest or appeal on the assessment is upheld, the
8 amount paid in error or excess shall be returned to the member
9 insurer. Interest on a refund due a protesting member insurer shall
10 be paid at the rate actually earned by the association.

11 j. The association may request information of member insurers
12 in order to aid in the exercise of its power under this section and
13 member insurers shall promptly comply with a request.

14 (cf: P.L.1994, c.180 s.1)

15

16 8. Section 9 of P.L.1991, c.208 (C.17B:32A-9) is amended to
17 read as follows:

18 9. a. (1) The association shall submit to the commissioner a
19 plan of operation and any amendments thereto necessary or suitable
20 to assure the fair, reasonable, and equitable administration of the
21 association. The plan of operation and any amendments thereto
22 shall become effective upon the commissioner's written approval or
23 at the expiration of 30 days after submission if it has not been
24 disapproved.

25 (2) If the association fails to submit a suitable plan of operation
26 within 120 days following the effective date of **【this act】** P.L.1991,
27 c.208 (C.17B:32A-1 et seq.) or if at any time thereafter the
28 association fails to submit suitable amendments to the plan, the
29 commissioner shall adopt such plan or amendments necessary to
30 effectuate the provisions of **【this act】** P.L.1991, c.208 (C.17B:32A-
31 1 et seq.). The plan or amendments shall continue in force until
32 modified by the commissioner or superseded by a plan submitted by
33 the association and approved by the commissioner.

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

35 c. The plan of operation shall, in addition to requirements
36 enumerated elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1
37 et seq.):

38 (1) establish procedures for handling the assets of the
39 association;

40 (2) establish the amount and method of reimbursing members of
41 the board of directors under subsection c. of section 6 of **【this act】**
42 P.L.1991, c.208 (C.17B:32A-6);

43 (3) establish regular places and times for meetings, including
44 telephone conference calls, of the board of directors;

45 (4) establish procedures for records to be kept of all financial
46 transactions of the association, its agents, and the board of
47 directors;

- 1 (5) establish the procedures whereby selections for the board of
2 directors will be made and submitted to the commissioner;
- 3 (6) establish any additional procedures for the imposition of
4 assessments under section 8 of **【this act】** P.L.1991, c.208
5 (C.17B:32A-8); **【and】**
- 6 (7) contain additional provisions necessary or proper for the
7 execution of the powers and duties of the association;
- 8 (8) establish procedures whereby a director may be removed for
9 cause, including in the case where a member insurer director
10 becomes an impaired or insolvent insurer; and
- 11 (9) require the board of directors to establish a policy and
12 procedures for addressing conflicts of interests.
- 13 d. The plan of operation may provide for the delegation of any
14 or all powers and duties of the association, except those set forth in
15 paragraph (3) of subsection m. of section 7 of P.L.1991, c.208
16 (C.17B:32A-7) and section 8 of **【this act】** P.L.1991, c.208
17 (C.17B:32A-8), to a corporation, association, or other organization
18 which performs or will perform functions similar to those of the
19 association, or its equivalent, in two or more other states. Such a
20 corporation, association, or organization shall be reimbursed for any
21 payments made on behalf of the association and shall be paid for its
22 performance of any function of the association. A delegation under
23 this subsection d. shall take effect only with the approval of both
24 the board of directors and the commissioner, and may be made only
25 to a corporation, association, or organization which extends
26 protection not substantially less favorable or effective than that
27 provided by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
28 (cf: P.L.1991, c.208, s.9)
29
- 30 9. Section 10 of P.L.1991, c.208 (C.17B:32A-10) is amended
31 to read as follows:
- 32 10. a. In addition to the duties and powers enumerated
33 elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), the
34 commissioner shall:
- 35 (1) upon request of the board of directors, provide the
36 association with a statement of the premiums in this State and any
37 other appropriate states for each member insurer;
- 38 (2) when an impairment is declared and the amount of the
39 impairment is determined, serve a demand upon the impaired
40 insurer to make good the impairment within a reasonable time.
41 Notice to the impaired insurer shall constitute notice to its
42 shareholders, if any. The failure of the impaired insurer to
43 promptly comply with a demand shall not excuse the association
44 from the performance of its powers and duties under **【this act】**
45 P.L.1991, c.208 (C.17B:32A-1 et seq.);
- 46 (3) in any liquidation or rehabilitation proceeding involving a
47 domestic member insurer, be appointed as the liquidator or
48 rehabilitator.

1 b. The commissioner may suspend or revoke, after notice and
2 hearing, the certificate of authority to transact **【insurance】** business
3 in this State of any member insurer which fails to pay an assessment
4 when due or fails to comply with the plan of operation. As an
5 alternative, the commissioner may levy a penalty on any member
6 insurer which fails to pay an assessment when due. That penalty
7 shall not exceed five percent of the unpaid assessment per month,
8 but no penalty shall be less than \$100 per month.

9 c. Any action of the board of directors or the association may
10 be appealed to the commissioner by any member insurer if that
11 appeal is taken within **【30】** 60 days of its receipt of notice of the
12 final action being appealed. If a member **【company】** insurer is
13 appealing an assessment, the amount assessed shall be paid to the
14 association and made available to meet association obligations
15 during the pendency of an appeal. If the appeal of an assessment is
16 upheld, the amount paid in error or excess shall be returned to the
17 member **【company】** insurer. Any final action or order of the
18 commissioner shall be subject to judicial review in a court of
19 competent jurisdiction.

20 d. The liquidator, rehabilitator, or conservator **【or receiver】** of
21 any impaired insurer may notify all interested persons of the effect
22 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
23 (cf: P.L.1991, c.208, s.10)
24

25 10. Section 11 of P.L.1991, c.208 (C.17B:32A-11) is amended
26 to read as follows:

27 11. a. To aid in the detection and prevention of member insurer
28 insolvencies or impairments, the commissioner may:

29 (1) notify the commissioners of insurance or comparable
30 officials of all the other states, territories of the United States and
31 the District of Columbia within 30 days when he takes any of the
32 following actions against a member insurer:

33 (a) revokes its certificate of authority or license;

34 (b) suspends its certificate of authority or license; or

35 (c) makes any formal order that the member insurer restrict its
36 premium writing, obtain additional contributions to surplus,
37 withdraw from this State, reinsure all or part of its business, or
38 increase capital, surplus, or any other account for the security of
39 **【policyholders】** policy or contract owners, certificate holders, or
40 creditors.

41 Notice shall be made in any form the commissioner deems
42 appropriate, including notification under the auspices of the
43 National Association of Insurance Commissioners, hereinafter
44 referred to as NAIC.

45 (2) report to the board of directors when he has taken any of the
46 actions set forth in paragraph (1) of this subsection or has received
47 notification from the commissioner of insurance or comparable
48 official of any other jurisdiction that any such action has been taken

1 in that jurisdiction. The report to the board of directors shall contain
2 all significant details of the action taken or of any such notification
3 received from another jurisdiction.

4 (3) report to the board of directors when he has reasonable cause
5 to believe from any examination, whether completed or in process,
6 of any member **[company]** insurer that the **[company]** member
7 insurer may be an impaired or insolvent insurer. The report and the
8 information therein shall be kept confidential by the board of
9 directors.

10 (4) furnish to the board of directors the NAIC Insurance
11 Regulatory Information System (IRIS) ratios and a list of
12 companies not included in the ratios developed by the NAIC. The
13 board may use the information contained therein in carrying out its
14 duties and responsibilities under this section. The report and
15 information contained therein shall be kept confidential by the
16 board of directors until such time as made public by the
17 commissioner or other lawful authority.

18 b. The commissioner may seek the advice and
19 recommendations of the board of directors **[or member insurers]**
20 concerning any matter affecting **[his]** the duties and responsibilities
21 of the commissioner regarding the financial condition of member
22 insurers and **[companies]** member insurers, health service
23 corporations, hospital service corporations, medical service
24 corporations, or health maintenance organizations seeking
25 admission to transact **[insurance]** business in this State.

26 c. The board of directors **[or any member thereof]** may, upon
27 majority vote, make reports and recommendations to the
28 commissioner upon any matter germane to the solvency,
29 liquidation, rehabilitation, conservation or receivership of any
30 member insurer or germane to the solvency of any **[company]**
31 insurer, health service corporation, hospital service corporation,
32 medical service corporation, or health maintenance organization
33 seeking to do **[insurance]** business in this State. Reports and
34 recommendations made pursuant to this subsection shall not be
35 considered public documents.

36 d. **[It shall be the duty of the]** The board of directors may,
37 upon majority vote, **[to]** notify the commissioner of any
38 information indicating any member insurer may be an impaired or
39 insolvent insurer.

40 e. **[The** board of directors may, upon majority vote, request
41 that the commissioner order an examination of any member insurer
42 which the board in good faith believes may be an impaired or
43 insolvent insurer. Such an examination may be conducted as a
44 NAIC examination or may be conducted by those persons as the
45 commissioner designates. The cost of the examination may be paid
46 by the association and the examination report shall be treated as are
47 other examination reports. In no event shall the examination report

1 be released to the board of directors of the association prior to its
2 release to the public, but this shall not preclude the commissioner
3 from taking action permitted by subsection a. of this section.

4 The commissioner shall notify the board of directors when the
5 examination is completed. The request for an examination shall be
6 kept on file by the commissioner, but it shall not be open to public
7 inspection, if at all, prior to the release of the examination report to
8 the public】 (Deleted by amendment, P.L. , c. (pending before
9 the Legislature as this bill).

10 f. The board of directors may, upon majority vote, make
11 recommendations to the commissioner for the detection and
12 prevention of member insurer insolvencies.

13 【g. The board of directors may, at the conclusion of any insurer
14 insolvency in which the association was obligated to pay covered
15 claims, prepare a report to the commissioner containing any
16 information it may have in its possession bearing on the history and
17 causes of that insolvency. The board shall cooperate with the
18 boards of directors of guaranty associations in other states in
19 preparing a report on the history and causes of insolvency of a
20 particular insurer, and may adopt by reference any report prepared
21 by another association】 (Deleted by amendment, P.L. , c.
22 (pending before the Legislature as this bill).

23 (cf: P.L.1991, c.208, s.11)

24

25 11. Section 12 of P.L.1991, c.208 (C.17B:32A-12) is amended
26 to read as follows:

27 12. a. Nothing in 【this act】 P.L.1991, c.208 (C.17B:32A-1 et
28 seq.) or P.L. , c. (C.) (pending before the Legislature as
29 this bill) shall be construed to reduce the liability for unpaid
30 assessments of the insureds or enrollees of an impaired or insolvent
31 insurer operating under a plan with assessment liability.

32 b. Records shall be kept of all negotiations and meetings in
33 which the association or its representatives are involved to discuss
34 the activities of the association in carrying out its powers and duties
35 under section 7 of 【this act】 P.L.1991, c.208 (C.17B:32A-7).
36 Records of those negotiations or meetings shall be made public only
37 upon the termination of a liquidation, rehabilitation, or conservation
38 【or receivership】 proceeding involving an impaired or insolvent
39 insurer, upon the termination of the impairment or insolvency of the
40 member insurer, or upon the order of a court of competent
41 jurisdiction.

42 c. For the purpose of carrying out its obligations under 【this
43 act】 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
44 deemed to be a creditor of an impaired or insolvent insurer to the
45 extent of assets attributable to covered policies or contracts reduced
46 by any amounts to which the association is entitled as subrogee
47 pursuant to subsection m. of section 7 of 【this act】 P.L.1991, c.208
48 (C.17B:32A-7). Assets of an impaired or insolvent insurer

1 attributable to covered policies or contracts shall be used to
2 continue all covered policies or contracts and pay all contractual
3 obligations of the impaired or insolvent insurer as required by **[this**
4 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.). For purposes of this
5 subsection, assets attributable to covered policies or contracts are
6 that proportion of the assets which the reserves that should have
7 been established for such policies or contracts bears to the reserves
8 that should have been established for all policies or contracts of
9 insurance or health benefit plans written by the impaired or
10 insolvent insurer.

11 d. As a creditor of the impaired or insolvent insurer as
12 established in subsection c. of this section and consistent with
13 section 33 of P.L.1992, c.65 (C.17B:32-63), the association and
14 other similar associations shall be entitled to receive a disbursement
15 of assets out of the marshaled assets, from time to time as the assets
16 become available to reimburse it, as a credit against contractual
17 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.). If the
18 liquidator has not, within 120 days of a final determination of
19 insolvency of a member insurer by the receivership court, made an
20 application to the court for the approval of a proposal to disburse
21 assets out of marshaled assets to guaranty associations having
22 obligations because of the insolvency, then the association shall be
23 entitled to make application to the receivership court for approval of
24 its own proposal to disburse these assets.

25 (1) Prior to the termination of any receivership, liquidation,
26 rehabilitation or conservation proceeding, the court may take into
27 consideration the contributions of the respective parties, including
28 the association, the shareholders, enrollees, certificate holders, and
29 **[policyowners]** policy or contract owners of an insolvent insurer,
30 and any other party with a bona fide interest in making an equitable
31 distribution of the ownership rights of that insolvent insurer. In
32 making such a determination, consideration shall be given to the
33 welfare of the **[policyholders]** policy or contract owners, enrollees,
34 and certificate holders, and to the reasonable requirements of a
35 continuing or successor member insurer.

36 (2) No dividend or other distribution to stockholders or
37 policyholders of an impaired or insolvent insurer shall be made
38 until and unless the total amount of valid claims of the association
39 with interest thereon for funds expended in carrying out its powers
40 and duties under section 7 of **[this act]** P.L.1991, c.208
41 (C.17B:32A-7) with respect to that member insurer have been
42 recovered by the association.

43 e. (1) If an order for liquidation or rehabilitation of **[an]** a
44 member insurer domiciled in this State has been entered, the
45 receiver appointed under that order shall have a right to recover on
46 behalf of the member insurer, from any affiliate that controlled it,
47 the amount of distributions, other than stock dividends paid by the
48 member insurer on its capital stock, made at any time during the

1 five years preceding the petition for liquidation or rehabilitation
2 subject to the limitations of paragraphs (2) through (4) of this
3 subsection.

4 (2) No such distribution shall be recoverable if the member
5 insurer shows that the distribution was lawful and reasonable when
6 paid, and that the member insurer did not know and could not
7 reasonably have known that the distribution might adversely affect
8 the ability of the member insurer to fulfill its contractual
9 obligations.

10 (3) Any person who was an affiliate that controlled the member
11 insurer at the time the distributions were paid shall be liable up to
12 the amount of distributions **[he]** received. Any person who was an
13 affiliate that controlled the member insurer at the time the
14 distributions were declared, shall be liable up to the amount of
15 distributions **[he]** which would have been received if they had been
16 paid immediately. If two or more persons are liable with respect to
17 the same distributions, they shall be jointly and severally liable.

18 (4) The maximum amount recoverable under this subsection
19 shall be the amount in excess of all other available assets of the
20 insolvent insurer needed to pay the contractual obligations of the
21 insolvent insurer.

22 (5) If any person liable under paragraph (3) of this subsection is
23 insolvent, all its affiliates that controlled it at the time the
24 distribution was paid shall be jointly and severally liable for any
25 resulting deficiency in the amount recovered from the insolvent
26 affiliate.

27 (cf: P.L.1991, c.280, s.12)

28

29 12. Section 13 of P.L.1991, c.208 (C.17B:32A-13) is amended
30 to read as follows:

31 13. The association shall be subject to examination and
32 regulation by the commissioner. The board of directors shall submit
33 to the commissioner each year, not later than 120 days after the
34 close of the association's fiscal year, a financial report in a form
35 approved by the commissioner and a report of its activities during
36 the preceding fiscal year. Upon request of a member insurer, the
37 association shall provide a copy of the report.

38 (cf: P.L.1991, c.208, s.13)

39

40 13. Section 15 of P.L.1991, c.208 (C.17B:32A-15) is amended
41 to read as follows:

42 15. a. There shall be no liability on the part of, and no cause of
43 action of any nature shall arise against, any member insurer or its
44 agents or employees, the association or its agents or employees,
45 members of the board of directors, or the commissioner or his
46 representatives, for any action or omission by them in the
47 performance of their powers and duties under **[this act]** P.L.1991,
48 c.208 (C.17B:32A-1 et seq.). This immunity shall extend to the

1 participation in any organization of one or more other state
2 associations of similar purposes and to any such organization and
3 its agents or employees.

4 b. With respect to any impairment or insolvency of a health
5 service corporation created pursuant to P.L.1985, c.236 (C.17:48E-1
6 et seq.), the association shall have no cause of action against any
7 not-for-profit or nonprofit corporation that is regulated by a law
8 governing the conduct of not-for-profit or nonprofit corporations,
9 except in the event of willful or wanton conduct, unless the not-for-
10 profit or nonprofit corporation is a provider of health care services
11 as defined in section 1 of P.L.1985, c.236 (C.17:48E-1). For
12 purposes of this subsection, "willful or wanton conduct" means a
13 course of action which shows the actual or deliberate intent to cause
14 harm.
15 (cf: P.L.1991, c.208, s.15)

16
17 14. Section 16 of P.L.1991, c.208 (C.17B:32A-16) is amended
18 to read as follows:

19 16. Upon application and notice, all proceedings in which an
20 insolvent insurer is a party or is obligated to defend a party in any
21 court in this State shall be stayed for **【120】** 180 days and any
22 additional time thereafter as may be determined by the court from
23 the date the insolvency is determined or any ancillary proceeding is
24 initiated in the State, whichever is later, to permit proper defense by
25 the association of all pending causes of action. With respect to any
26 covered claims arising from a judgment under any decision, verdict
27 or finding based on the default of the insolvent insurer or its failure
28 to defend an insured, the association either on its own behalf or on
29 behalf of the insured may apply to have the judgment, order,
30 decision, verdict or finding set aside by the court in which the
31 judgment, order, decision, verdict or finding is entered and shall be
32 permitted to defend against the claim on the merits.
33 (cf: P.L.1991, c.208, s.16)

34
35 15. Section 17 of P.L.1991, c.208 (C.17B:32A-17) is amended
36 to read as follows:

37 17. a. No person, including **【an】** a member insurer, agent or
38 affiliate of **【an】** a member insurer or insurance producer shall
39 make, publish, disseminate, circulate or place before the public or
40 cause directly or indirectly, to be made, published, disseminated,
41 circulated or placed before the public, in any newspaper, magazine
42 or other publication or in the form of a notice, circular, pamphlet,
43 letter or poster, or over any radio station or television station, or in
44 any other way, any advertisement, announcement or statement,
45 written or oral, which uses the existence of the association for the
46 purpose of sales, solicitation, or inducement to purchase any form
47 of insurance or other coverage covered by **【this act】** P.L.1991,
48 c.208 (C.17B:32A-1 et seq.). This subsection shall not apply to the

1 department or the association or to any other entity which does not
2 sell or solicit insurance or coverage by a health service corporation,
3 hospital service corporation, medical service corporation, or health
4 maintenance organization.

5 b. Within 180 days of the effective date of **【this act】** P.L.1991,
6 c.208 (C.17B:32A-1 et seq.), the association shall prepare a
7 summary document describing the general purposes and current
8 limitations of **【the act】** P.L.1991, c.208 (C.17B:32A-1 et seq.)
9 which complies with subsection c. of this section. This document
10 shall be submitted to the commissioner for approval. Sixty days
11 after receiving that approval, no member insurer may deliver a
12 policy or contract described in subsection b. of section 3 of **【this**
13 **act】** P.L.1991, c.208 (C.17B:32A-3) to a policy or contract
14 **【holder】** owner, certificate holder, or enrollee unless the document
15 is delivered to the policy or contract **【holder】** owner, certificate
16 holder, or enrollee prior to or at the time of delivery of the policy or
17 contract. The document should also be available upon request by a
18 **【policyholder】** policy or contract owner, certificate holder, or
19 enrollee. The distribution, delivery, contents or interpretation of this
20 document shall not mean that either the policy or the contract or the
21 policy or contract owner, certificate holder, or enrollee thereof
22 would be covered in the event of the impairment or insolvency of a
23 member insurer. The document shall be revised by the association
24 as amendments to the act may require. Failure to receive this
25 document does not give the **【policyholder】** policy or contract
26 **【holder】** owner, certificate holder, enrollee, or insured any greater
27 rights than those stated in **【this act】** P.L.1991, c.208 (C.17B:32A-1
28 et seq.). **【Delivery of the document required by this subsection shall**
29 **not be required however, in the case of a policy or contract**
30 **excluded from coverage under this act pursuant to subsection c. of**
31 **section 3 of this act and with respect to which notice as required by**
32 **subsection d. of this section has been given.】**

33 c. The document prepared pursuant to subsection b. of this
34 section shall contain a clear and conspicuous disclaimer on its face.
35 The commissioner shall promulgate a rule establishing the form and
36 content of the disclaimer. The disclaimer shall:

37 (1) state the name and address of the association and the
38 department;

39 (2) prominently warn the policy owner, contract owner,
40 certificate holder, or **【contract holder】** enrollee that the association
41 may not cover the policy or contract or, if coverage is available, it
42 will be subject to substantial limitations and exclusions and
43 conditioned on continued residence in this State;

44 (3) state that the member insurer and its **【insurance】** producers
45 are prohibited by law from using the existence of the association for
46 the purpose of sales, solicitation or inducement to purchase any
47 form of insurance, health service corporation coverage, hospital

1 service corporation coverage, medical service corporation coverage,
2 or health maintenance organization coverage;

3 (4) emphasize that the policy or contract owner, certificate
4 holder, or [contract holder] enrollee should not rely on coverage
5 under the association when selecting **[an]** a member insurer, health
6 service corporation, hospital service corporation, medical service
7 corporation, or health maintenance organization; [and]

8 (5) state the types of policies or contracts for which guaranty
9 funds will provide coverage;

10 (6) explain rights available and procedures for filing a complaint
11 to allege a violation of any provisions of P.L.1991, c.208
12 (C.17B:32A-1 et seq.); and

13 (7) provide other information as directed by the commissioner,
14 including, but not limited to, sources for information about the
15 financial condition of member insurers provided that the
16 information is not proprietary and is subject to disclosure under
17 P.L.1963, c.73 (C.47:1A-1 et seq.).

18 d. **[No insurer or insurance producer may deliver a policy or**
19 **contract described in subsection b. of section 3 and excluded under**
20 **paragraph (1) of subsection c. of section 3 from coverage under this**
21 **act unless the insurer or insurance producer, prior to or at the time**
22 **of delivery, gives the policy or contract holder a separate written**
23 **notice which clearly and conspicuously discloses that the policy or**
24 **contract is not covered by the association. The commissioner may**
25 **by rule further specify the form and content of the notice]** A
26 member insurer shall retain evidence of compliance with subsection
27 b. of this section for so long as the policy or contract for which the
28 notice is given remains in effect.

29 (cf: P.L.1991, c.208, s.17)

30

31 16. Section 18 of P.L.1991, c.208 (C.17B:32A-18) is amended
32 to read as follows:

33 18. a. A member insurer may offset against its premium tax
34 liability, attributable to premiums written in that year, and
35 determined pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1),
36 any assessments for which a certificate of contribution has been
37 issued, pursuant to subsection h. of section 8 of **[this act]** P.L.1991,
38 c.208 (C.17B:32A-8) to the extent of 10% of the amount of those
39 assessments for each of the five calendar years following the second
40 year after the year in which those assessments were paid, except
41 that no member insurer may offset its premium tax liability by more
42 than 20% of its premium tax liability in any one year. If a member
43 insurer should cease doing business in this State, any uncredited
44 assessments may be offset against its premium tax liability for the
45 year in which it ceases to do business in this State.

46 b. **[Any sums which are acquired by member insurers as the**
47 **result of a refund from the association pursuant to subsection f. of**
48 **section 8 of this act, and which have theretofore been offset against**

1 premium taxes as provided in subsection a. of this section, shall be
 2 paid by those insurers to the State as the Director of the Division of
 3 Taxation may require. The association shall notify the
 4 commissioner and the Director of the Division of Taxation of any
 5 refunds made] A member insurer that is exempt from taxes
 6 referenced in subsection a. of this section may recoup its
 7 assessments by a surcharge on its premiums or by a surcharge on its
 8 membership fees (as applicable) in a sum reasonably calculated to
 9 recoup the assessments over a reasonable period of time, as
 10 approved by the commissioner. Amounts recouped shall not be
 11 considered premiums for any other purpose, including the
 12 computation of gross premium tax, the medical loss ratio, or
 13 insurance producer commission. If a member insurer collects excess
 14 surcharges, the member insurer shall remit the excess amount to the
 15 association, and the excess amount shall be applied to reduce future
 16 assessments in the appropriate account.

17 c. Any sums which are acquired by member insurers as the
 18 result of a refund from the association pursuant to subsection f. of
 19 section 8 of P.L.1991, c.208 (C.17B:32A-8), and which have
 20 theretofore been offset against premium taxes as provided in
 21 subsection a. of this section, shall be paid by those member insurers
 22 to the State as the Director of the Division of Taxation may require.
 23 The association shall notify the commissioner and the Director of
 24 the Division of Taxation of any refunds made.

25 d. This section shall not apply in any way to the imposition or
 26 collection of, and no offset shall be permitted against, the surtax on
 27 premiums authorized pursuant to section 76 of P.L.1990, c.8
 28 (C.17:33B-49).

29 (cf: P.L.1991, c.208, s.18)

30

31 17. Section 19 of P.L.1991, c.208 (C.17B:32A-19) is amended
 32 to read as follows:

33 19. a. The provisions of [sections 2 through 18 of this act]
 34 P.L.1991, c.208 (C.17B:32A-1 et seq.) [shall not apply to any
 35 insurer which is insolvent or impaired on December 31, 1990,
 36 except as provided in paragraph (2) of subsection b. of section 3 of
 37 this act] prior to the effective date of P.L. , c. (C.)
 38 (pending before the Legislature as this bill) shall apply to all
 39 matters relating to any impaired insurer or insolvent insurer as
 40 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which
 41 the association first became obligated under section 7 of P.L.1991,
 42 c.208 (C.17B:32A-7) in effect prior to the effective date of P.L. ,
 43 c. (C.) (pending before the Legislature as this bill).

44 b. The provisions of P.L.1991, c.208 (C.17B:32A-1 et seq.) in
 45 effect on and after the effective date of P.L. , c. (C.)
 46 (pending before the Legislature as this bill) shall apply to all
 47 matters relating to any impaired insurer or insolvent insurer as
 48 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which

1 the association first became obligated under section 7 of P.L.1991,
2 c.208 (C.17B:32A-7) on or after the effective date of P.L. _____, c.
3 (C. _____) (pending before the Legislature as this bill).
4 (cf: P.L.1991, c.208, s.19)

5

6 18. This act shall take effect immediately.

7

8

9

STATEMENT

10

11 This bill updates the “New Jersey Life and Health Insurance
12 Guaranty Association Act” to current standards from the National
13 Association of Insurance Commissioners.

14 Among the updates in the bill is an expansion of the assessment
15 base that is to cover the insolvencies of long-term care insurers. All
16 life and health insurers will be required to assist in covering these
17 insolvencies. Currently, assessments are made against all health
18 insurance companies, even if the company does not sell long-term
19 care insurance, but only those life insurance companies that sell
20 long-term care insurance are assessed.

21 Additionally, this bill sets the cap at \$500,000 on health
22 insurance benefits issued by the guaranty association in cases of
23 insurer impairment or insolvency. This cap is proposed for
24 adjustment based upon changes in the health care costs component
25 of the consumer price index from January 1, 2022, to the date on
26 which the member insurer, as defined in the bill, becomes an
27 insolvent insurer.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3899

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 2022

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 3899.

This bill updates the “New Jersey Life and Health Insurance Guaranty Association Act” to current standards from the National Association of Insurance Commissioners.

Among the updates in the bill is an expansion of the assessment base that is to cover the insolvencies of long-term care insurers. All life and health insurers will be required to assist in covering these insolvencies. Currently, assessments are made against all health insurance companies, even if the company does not sell long-term care insurance, but only those life insurance companies that sell long-term care insurance are assessed.

COMMITTEE AMENDMENTS:

The committee amended the bill to remove from the bill provisions:

(1) setting a cap of \$500,000 on health insurance benefits issued by the guaranty association in cases of insurer impairment or insolvency, thereby leaving in place the requirement under existing law that these benefits be unlimited;

(2) requiring, for the purposes of the “New Jersey Life and Health Insurance Guaranty Association Act,” benefits provided by a long-term care rider to a life insurance policy or annuity contract to be considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates;

(3) requiring that dollar amounts allotted by the guaranty association pursuant to the bill increase or decrease based upon changes in the health care costs component of the consumer price index.

Governor Murphy Takes Action on Legislation

08/12/2022

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

S-2422/A-3899 (Pou/Wimberly, Reynolds-Jackson) - Updates “New Jersey Life and Health Insurance Guaranty Association Act” to current standards of National Association of Insurance Commissioners

A-4066/S-2734 (Verrelli, Moen, Speight/Codey, Stanfield) - Appropriates funds to DEP for environmental infrastructure projects for FY2023

A-4067/S-2735 (Sampson, Conaway, Carter/Codey, Greenstein) - Authorizes NJ Infrastructure Bank to expend certain sums to make loans for environmental infrastructure projects for FY2023