

# 17:30A-2

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2004 **CHAPTER:** 175

**NJSA:** 17:30A-2 (Revisions to "NJ Property-Liability Insurance Guaranty Association Act")

**BILL NO** S702/1580 (Substituted for A2462/2873)

**SPONSOR(S):** Lesniak and others

**DATE INTRODUCED:** January 26, 2004

**COMMITTEE:** **ASSEMBLY:** Financial Institutions and Insurance  
**SENATE:** Commerce

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** November 15, 2004

**SENATE:** June 17, 2004

**DATE OF APPROVAL:** December 22, 2004

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Senate Committee Substitute enacted

#### S702/1580

[SPONSOR'S STATEMENT \(S702\)](#): (Begins on page 5 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(S1580\)](#) (Begins on page 13 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

#### A2462/2873

[SPONSOR'S STATEMENT \(A2462\)](#): (Begins on page 5 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(A2873\)](#): (Begins on page 13 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2004, CHAPTER 175, *approved December 22, 2004*  
Senate Committee Substitute for  
Senate, Nos. 702 and 1580

1 AN ACT concerning the New Jersey Property-Liability Insurance  
2 Guaranty Association and amending P.L.1974, c.17.

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.1974, c.17 (C.17:30A-2) is amended to read  
8 as follows:

9 2. a. The purpose of this act is to provide a mechanism for the  
10 payment of covered claims under certain insurance policies, to avoid  
11 excessive delay in payment, to [avoid] minimize financial loss to  
12 claimants or policyholders because of the insolvency of an insurer, to  
13 assist in the detection and prevention of insurer insolvencies, to  
14 provide an association to assess the cost of such protection among  
15 insurers, and to provide a mechanism to run off, manage, administer  
16 and pay claims asserted against the Unsatisfied Claim and Judgment  
17 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the  
18 New Jersey Automobile Full Insurance Underwriting Association,  
19 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the  
20 Market Transition Facility, created pursuant to section 88 of P.L.1990,  
21 c.8 (C.17:33B-11).

22 b. This act shall apply to all kinds of direct insurance, except life  
23 insurance, accident and health insurance, workers' compensation  
24 insurance, title insurance, annuities, surety bonds, credit insurance,  
25 mortgage guaranty insurance, municipal bond coverage, fidelity  
26 insurance, investment return assurance, ocean marine insurance and  
27 pet health insurance.  
28 (cf: P.L.2003, c.89, s.2)

29  
30 2. Section 5 of P.L.1974, c.17(C.17:30A-5) is amended to read as  
31 follows:

32 5. As used in this act:

33 [a. (Deleted by amendment.)

34 b.] "Affiliate" means a person who directly, or indirectly, through  
35 one or more intermediaries, controls, is controlled by, or is under  
36 common control with an insolvent insurer on December 31 of the year  
37 immediately preceding the date the insurer becomes an insolvent  
38 insurer;

39 "Association" means the New Jersey Property-Liability Insurance  
40 Guaranty Association created under section 6;

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

Matter underlined thus is new matter.

1 [c.] "Commissioner" means the Commissioner of Banking and  
2 Insurance of this State;

3 [d.] "Covered claim" means an unpaid claim, including one of  
4 unearned premiums, which arises out of and is within the coverage,  
5 and not in excess of the applicable limits of an insurance policy to  
6 which this act applies, issued by an insurer, if such insurer becomes an  
7 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
8 is a resident of this State at the time of the insured event provided that  
9 for an entity other than an individual, the residence of the claimant or  
10 insured is the state in which its principal place of business was located  
11 at the time of the insured event; or (2) [the property from which the  
12 claim arises is permanently located] the claim is a first party claim  
13 made by an insured for damage to property with a permanent location  
14 in this State.

15 "Covered claim" shall not include: (1) any amount due any  
16 reinsurer, insurer, insurance pool, or underwriting association, as  
17 subrogation recoveries or otherwise; provided, that a claim for any  
18 such amount, asserted against a person insured under a policy issued  
19 by an insurer which has become an insolvent insurer, which, if it were  
20 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
21 or underwriting association, would be a "covered claim," may be filed  
22 directly with the receiver of the insolvent insurer, but in no event may  
23 any such claim be asserted in any legal action against the insured of  
24 such insolvent insurer[.

25 A "covered claim" shall not include]; (2) amounts for interest on  
26 unliquidated claims[, ] ; (3) punitive damages unless covered by the  
27 policy[, ] ; (4) counsel fees for prosecuting suits for claims against the  
28 association[, and] ; (5) assessments or charges for failure of such  
29 insolvent insurer to have expeditiously settled claims[.

30 A "covered claim" shall not include]; (6) counsel fees and other  
31 claim expenses incurred prior to the date of insolvency; (7) a claim  
32 filed with the association, liquidator or receiver of an insolvent insurer  
33 after the final date set by the court for the filing of claims against the  
34 liquidator or receiver of an insolvent insurer or, in the event a final  
35 date is not set by the court for the filing of claims against the  
36 liquidator or receiver of an insolvent insurer, two years from the date  
37 of the order of liquidation, unless the claimant demonstrates unusual  
38 hardship and the commissioner approves of treatment of the claim as  
39 a "covered claim." "Unusual hardship" shall be defined in regulations  
40 promulgated by the commissioner. With respect to insurer  
41 insolvencies pending as of the effective date of [this 1996 amendatory  
42 act] P.L. , c. (now before the Legislature as this bill), a "covered  
43 claim" shall not include a claim filed with the association, liquidator or  
44 receiver of an insolvent insurer: [(1)] (a) more than one year after the  
45 effective date of [this 1996 amendatory act] P.L. , c. (now before

1 the Legislature as this bill); or [(2)] (b) the date set by the court for  
2 the filing of claims against the liquidator or receiver of the insolvent  
3 insurer, whichever date occurs later;

4 [e.] and (8) any first party claim by an insured whose net worth  
5 exceeds \$25 million on December 31 of the year prior to the year in  
6 which the insurer becomes an insolvent insurer; provided that an  
7 insured's net worth on that date shall be deemed to include the  
8 aggregate net worth of the insured and all of its affiliates as calculated  
9 on a consolidated basis;

10 "Credit insurance" means credit life, credit disability, credit  
11 property, credit unemployment, involuntary unemployment, mortgage  
12 life, mortgage guaranty, mortgage disability, automobile dealer gap  
13 insurance and any other form of insurance offered in connection with  
14 an extension of credit that the commissioner determines should be  
15 designated a form of credit insurance.

16 "Exhaust" means with respect to other insurance, the application  
17 of a credit for the maximum limit under the policy, except that in any  
18 case in which continuous indivisible injury or property damage occurs  
19 over a period of years as a result of exposure to injurious conditions,  
20 exhaustion shall be deemed to have occurred only after a credit for the  
21 maximum limits under all other coverages, primary and excess, if  
22 applicable, issued in all other years has been applied. With respect to  
23 health insurance and workers' compensation insurance, "exhaust"  
24 means the application of a credit for the amount of recovery under the  
25 insurance policy. With respect to another insurance guaranty  
26 association or its equivalent, "exhaust" means the application of a  
27 credit for the maximum statutory limit of recovery from that other  
28 guaranty association or its equivalent. The amount of a covered claim  
29 payable by the association shall be reduced by the amount of any  
30 applicable credits;

31 "Insolvent insurer" means (1) a licensed insurer admitted pursuant  
32 to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1 et seq.,  
33 or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business of  
34 insurance in this State either at the time the policy was issued or when  
35 the insured event occurred, and (2) [which is determined to be  
36 insolvent] against whom an order of liquidation has been entered with  
37 a finding of insolvency by [the] a court of competent jurisdiction.  
38 "Insolvent insurer" does not include any unauthorized or nonadmitted  
39 insurer whether or not deemed eligible for surplus lines pursuant to  
40 P.L.1960, c.32 (C.17:22-6.37 et seq.);

41 [f.] "Member insurer" means any person who (1) writes any kind  
42 of insurance to which this act applies under section 2 b. including the  
43 exchange of reciprocal or interinsurance contracts and (2) is a licensed  
44 insurer admitted or authorized to transact the business of insurance in  
45 this State. "Member insurer" does not include any unauthorized or  
46 nonadmitted insurer whether or not deemed eligible for surplus lines

1 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

2 [g.] "Net direct written premiums" means direct gross premiums  
3 written in this State on insurance policies to which this act applies, less  
4 return premiums thereon and dividends paid or credited to  
5 policyholders on such direct business. "Net direct written premiums"  
6 does not include premiums on contracts between insurers or  
7 reinsurers, and does not include premiums on policies issued by an  
8 insurer as a member of the New Jersey Insurance Underwriting  
9 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

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

23 "Person" means any individual, corporation, partnership, association  
24 or voluntary organization.

25 (cf: P.L.1996, c.156, s.1)

26

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

29 6. There is created a private, nonprofit, unincorporated, legal entity  
30 to be known as the New Jersey Property-Liability Insurance Guaranty  
31 Association. All insurers defined as member insurers in [subsection]  
32 section 5 [f.] shall be and remain members of the association as a  
33 condition of their authority to transact insurance in this State. The  
34 association shall perform its functions under a plan of operation  
35 established and approved under section 9 and shall exercise its powers  
36 through a board of directors established under section 7.

37 The association is also authorized and shall have all of the powers  
38 necessary and appropriate for the management and administration of  
39 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,  
40 in accordance with the provisions of the "New Jersey Surplus Lines  
41 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et  
42 seq.).

43 The association is also authorized and shall have all of the powers  
44 necessary and appropriate for the management and administration of  
45 the affairs of, and the payment of valid claims asserted against: the  
46 Unsatisfied Claim and Judgment Fund, created pursuant to the

1 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey  
2 Automobile Full Insurance Underwriting Association, created pursuant  
3 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the  
4 Market Transition Facility created pursuant to the provisions of  
5 section 88 of P.L.1990, c.8 (C.17:33B-11).  
6 (cf: P.L.2003, c.89, s.3)

7

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

10 8. a. The association shall:

11 (1) Be obligated to the extent of the covered claims against an  
12 insolvent insurer incurred [, in the case of private passenger  
13 automobile insurance, prior to or after the determination of insolvency,  
14 but before the policy expiration date or the date upon which the  
15 insured replaces the policy or causes its cancellation, or in the case of  
16 insurance other than private passenger automobile insurance, covered  
17 claims against such insolvent insurer incurred] prior to or 90 days  
18 after the determination of insolvency, or before the policy expiration  
19 date if less than 90 days after said determination, or before the insured  
20 replaces the policy or causes its cancellation, if he does so within 90  
21 days of the determination, [but such] except that in the case of private  
22 passenger automobile insurance, the commissioner may, depending  
23 upon factors such as the level of that insurance written by the insolvent  
24 insurer, the volume of claims arising under that insurance, and  
25 conditions currently relating to the voluntary market for that insurance  
26 in this State, order the association to treat all or a portion of claims  
27 arising under that insurance as covered claims if they are incurred prior  
28 to or after the determination of insolvency, but before the policy  
29 expiration date or the date upon which the insured replaces the policy  
30 or causes its cancellation, and otherwise qualify as covered claims  
31 under the act. That obligation shall include only that amount of each  
32 covered claim which is less than \$300,000.00 per claimant and subject  
33 to any applicable deductible and self-insured retention contained in the  
34 policy, except that the \$300,000.00 limitation shall not apply to a  
35 covered claim arising out of insurance coverage mandated by section  
36 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under  
37 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the  
38 association shall be liable for payment of benefits in an amount not to  
39 exceed the amount set forth in section 4 of P.L.1972, c.70  
40 (C.39:6A-4). The commissioner may pay a portion of or defer the  
41 association's obligations for covered claims based on the monies  
42 available to the association. In no event shall the association be  
43 obligated to a policyholder or claimant in an amount in excess of the  
44 limits of liability stated in the policy of the insolvent insurer from  
45 which the claim arises. Any obligation of the association to defend an  
46 insured shall cease upon the association's payment or tender of an

1 amount equal to the lesser of the association's covered claim statutory  
2 limit or the applicable policy limit;

3 (2) Be deemed the insurer to the extent of its obligation on the  
4 covered claims and to such extent shall have all rights, duties, and  
5 obligations of the insolvent insurer as if the insurer had not become  
6 insolvent;

7 (3) Assess member insurers in amounts necessary to pay:

8 (a) The obligations of the association under paragraphs (1) and  
9 (11) of this subsection;

10 (b) The expenses of handling covered claims;

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

12 (d) Other expenses authorized by this act[, excluding expenses  
13 incurred by the association pursuant to paragraphs (9) and (10) of this  
14 subsection].

15 The assessments of each member insurer shall be in the proportion  
16 that the net direct written premiums of the member insurer for the  
17 calendar year preceding the assessment bears to the net direct written  
18 premiums of all member insurers for the calendar year preceding the  
19 assessment.

20 Each member insurer shall be notified of the assessment not later  
21 than 30 days before it is due. No member insurer of the association  
22 may be assessed pursuant to this paragraph (3) in any year in an  
23 amount greater than 2% of that member insurer's net direct written  
24 premiums for the calendar year preceding the assessment with regard  
25 to the association's obligation to pay covered claims and related  
26 expenses arising under coverages issued by insolvent insurers pursuant  
27 to P.L.1974, c.17 (C.17:30A-1 et seq.).

28 The association may, subject to the approval of the commissioner,  
29 exempt, abate or defer, in whole or in part, the assessment of any  
30 member insurer, if the assessment would cause the member insurer's  
31 financial statement to reflect amounts of capital or surplus less than  
32 the minimum amounts required for a certificate of authority by any  
33 jurisdiction in which the member insurer is authorized to transact  
34 insurance. In the event an assessment against a member insurer is  
35 exempted, abated, or deferred, in whole or in part, because of the  
36 limitations set forth in this section, the amount by which such  
37 assessment is exempted, abated, or deferred shall be assessed against  
38 the other member insurers in a manner consistent with the basis for  
39 assessments set forth in this section. If the maximum assessment,  
40 together with the other assets of the association, does not provide in  
41 any one year an amount sufficient to carry out the responsibilities of  
42 the association, the necessary additional funds shall be assessed as  
43 soon thereafter as it is permitted by this act. Each member insurer  
44 serving as a servicing facility may set off against any assessment,  
45 authorized payments made on covered claims and expenses incurred  
46 in the payment of such claims by such member insurer;



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

7 (5) Notify such persons as the commissioner directs under  
8 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17  
9 (C.17:30A-10);

10 (6) Handle claims through its employees or through one or more  
11 insurers or other persons designated as servicing facilities. Designation  
12 of a servicing facility is subject to the approval of the commissioner,  
13 but such designation may be declined by a member insurer. The  
14 association is designated as a servicing facility for the administration  
15 of claim obligations of: (a) the New Jersey Surplus Lines Insurance  
16 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance  
17 Association; and (c) the Unsatisfied Claim and Judgment Fund. The  
18 association may also be designated or may contract as a servicing  
19 facility for any other entity which may be recommended by the  
20 association's board of directors and approved by the commissioner;

21 (7) Reimburse each servicing facility for obligations of the  
22 association paid by the facility and for expenses incurred by the facility  
23 while handling claims on behalf of the association and shall pay the  
24 other expenses of the association authorized by this act;

25 (8) Make loans to the New Jersey Surplus Lines Insurance  
26 Guaranty Fund and the Unsatisfied Claim and Judgment Fund [is] in  
27 such amounts and on such terms as the board of directors may  
28 determine are necessary or appropriate to effectuate the purposes of  
29 P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance with the plan of  
30 operation; provided, however, no such loan transaction shall be  
31 authorized to the extent the federal tax exemption of the association  
32 would be withdrawn or the association would otherwise incur any  
33 federal tax or penalty as a result of such transaction;

34 (9) [Assess member insurers in amounts necessary to make loans  
35 pursuant to paragraph (10) of this subsection. The estimated  
36 assessments of each member insurer shall be in the proportion that the  
37 net direct written premiums of the member insurer for the calendar  
38 year preceding the assessment bears to the net direct written premiums  
39 of all member insurers for the calendar year preceding the assessment  
40 with actual assessments adjusted in the succeeding year based on the  
41 proportion that the assessed member insurer's net direct written  
42 premiums in the year of assessment bears to the net direct written  
43 premiums of all member insurers for that year.

44 (a) For the purposes of this paragraph, "net direct written  
45 premiums" shall not include medical malpractice liability insurance  
46 premiums paid to member insurers to which an additional charge has

1 been applied for deposit in the New Jersey Medical Malpractice  
2 Reinsurance Recovery Fund as provided in the "Medical Malpractice  
3 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the  
4 regulations promulgated pursuant thereto.

5 (b) In the event that the commissioner certifies that loans in  
6 amounts less than \$160 million per calendar year as provided in  
7 paragraph (10) of this subsection will satisfy the current and  
8 anticipated financial obligations of the Market Transition Facility,  
9 without reference to the amount of funds remaining from the sale of  
10 the Market Transition Facility Senior Lien Revenue Bonds, a member  
11 insurer, and all of its affiliates as defined in subsection a. of section 1  
12 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced  
13 assessment pursuant to this paragraph if the member insurer and all  
14 such affiliates: (I) did not issue or renew a policy of private passenger  
15 automobile insurance in this State on or after January 1, 1973; (ii)  
16 were not assessed as members of the Market Transition Facility as  
17 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had  
18 not relinquished voluntarily any expectation they may have had for the  
19 repayment of loans made pursuant to paragraph (10) of this  
20 subsection, as provided by paragraph (2) of subsection b. of section 6  
21 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or  
22 settlement agreement approved by any court of competent jurisdiction,  
23 on or before the effective date of this 1995 amendatory act. The  
24 reduced assessment of such members shall be equal to their  
25 proportionate share of the difference between the amount certified by  
26 the commissioner and the total of the assessment of all other insurers  
27 subject to such assessment. If the amount of such difference is zero  
28 or less, the reduced assessment shall be zero] (Deleted by amendment,  
29 P.L. . . . , c. . . .)

30 (10) [Make loans in the amount of \$160 million per calendar year,  
31 beginning in calendar year 1990, or upon certification by the  
32 commissioner, as provided by paragraph (b) of subsection (9) of this  
33 section, that lesser amounts will satisfy the current and anticipated  
34 financial obligations of the Market Transition Facility, such lesser  
35 amounts as may be collected pursuant to paragraph (9) of this  
36 subsection, to the New Jersey Automobile Insurance Guaranty Fund  
37 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except  
38 that no loan shall be made pursuant to this paragraph after December  
39 31, 1997. In no event shall member insurers subject to assessments  
40 have their financial obligation increased due to reductions granted  
41 pursuant to paragraph (9) of this subsection] (Deleted by amendment,  
42 P.L. . . . , c. . . .)

43 (11) Reimburse an insurer for medical expense benefits in excess  
44 of \$75,000 per person per accident as provided in section 2 of  
45 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an  
46 automobile insurance policy issued prior to January 1, 2004;

1 (12) Undertake all of the management, administrative, and claims  
2 activities of the Unsatisfied Claim and Judgment Fund, created  
3 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey  
4 Automobile Full Insurance Underwriting Association, created pursuant  
5 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition  
6 Facility, created pursuant to section 88 of P.L.1990, c.8  
7 (C.17:33B-11).

8 b. The association may:

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

11 (2) Borrow and separately account for funds from any source,  
12 including, but not limited to, the New Jersey Surplus Lines Insurance  
13 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such  
14 amounts and on such terms, as the board of directors may determine  
15 are necessary or appropriate to effectuate the purpose of this act in  
16 accordance with the plan of operation; provided, however, no such  
17 borrowing transaction shall be authorized to the extent the federal tax  
18 exemption of the association would be withdrawn or the association  
19 would otherwise incur any federal tax or penalty as a result of such  
20 transaction;

21 (3) Sue or be sued;

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

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

26 (6) Refund to the member insurers in proportion of the  
27 contribution of each member insurer that amount by which the assets  
28 exceed the liabilities if, at the end of any calendar year, the board of  
29 directors finds that the assets of the association exceed the liabilities,  
30 as estimated by the board of directors for the coming year.

31 (cf: P.L.2003, c.89, s.4)

32  
33 5. Section 10 of P.L.1974, c.17 (C.17:30A-10) is amended to read  
34 as follows:

35 10. a. The commissioner shall:

36 (1) Notify the association of the existence of an insolvent insurer  
37 not later than 3 days after he receives notice of the determination of  
38 the insolvency. The association shall be entitled to a copy of any  
39 complaint seeking an order of liquidation with a finding of insolvency  
40 against a member insurer at the same time that such complaint is filed  
41 with a court of competent jurisdiction;

42 (2) Upon request of the board of directors, provide the association  
43 with a statement of the net direct written premiums of each member  
44 insurer.

45 b. The commissioner may:

46 (1) Require that the association notify the insureds of the insolvent

1 insurer and any other interested parties of the determination of  
2 insolvency and of their rights under this act. Such notification [may  
3 be by mail at their last known address, where available, but if  
4 sufficient information for notification by mail is not available, notice]  
5 shall be by publication in [a newspaper] newspapers of general  
6 circulation [shall be sufficient] as the commissioner shall direct;

7 (2) Suspend or revoke, after notice and hearing, the certificate or  
8 authority to transact insurance in this State of any member insurer  
9 which fails to pay an assessment when due or fails to comply with the  
10 plan of operation. As an alternative, the commissioner may levy a fine  
11 on any member insurer which fails to pay an assessment when due.  
12 Such fine shall not exceed 5% of the unpaid assessment per month,  
13 except that no fine shall be less than \$100.00 per month;

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

16 (cf: P.L.1979, c.448, s.5)

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

20 11. a. Any person recovering under this act shall be deemed to  
21 have assigned his rights under the policy to the association to the  
22 extent of his recovery from the association. Every insured or claimant  
23 seeking the protection of this act shall cooperate with the association  
24 to the same extent as such person would have been required to  
25 cooperate with the insolvent insurer. The association shall have no  
26 cause of action against the insured of the insolvent insurer for any  
27 sums it has paid out except such causes of action as the insolvent  
28 insurer would have had if such sums had been paid by the insolvent  
29 insurer. In the case of an insolvent insurer operating on a plan with an  
30 assessment liability, payments of claims of the association shall not  
31 operate to reduce the liability of insureds to the receiver, liquidator, or  
32 statutory successor for unpaid assessments;

33 b. The receiver, liquidator, or statutory successor of an insolvent  
34 insurer shall be bound by settlements of covered claims by the  
35 association or its representatives. The court having jurisdiction shall  
36 grant such claims priority equal to that which the claimant would have  
37 been entitled in the absence of this act against the assets of the  
38 insolvent insurer. The expenses of the association or similar  
39 organization in handling claims shall be accorded the same priority as  
40 the liquidator's expenses;

41 c. The association shall periodically file with the receiver or  
42 liquidator of the insolvent insurer statements of the covered claims  
43 paid by the association and estimates of anticipated claims on the  
44 association which shall preserve the rights of the association against  
45 the assets of the insolvent insurer;

46 d. The liquidator, receiver, or statutory successor of an insolvent

1 insurer covered by this act shall permit access by the board or its  
2 representative to all of the insolvent insurer's records which would  
3 assist the board in carrying out its functions under this act with regard  
4 to covered claims. In addition, the liquidator, receiver, or statutory  
5 successor shall provide the board or its representative with copies or  
6 permit it to make copies of such records upon the request of the board  
7 and at the expense of the board.

8 e. The association shall have the right to recover from the  
9 following persons the amount of any covered claim paid to or on  
10 behalf of that person pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.):

11 (1) An insured whose net worth on December 31 of the year  
12 immediately preceding the date the insurer becomes an insolvent  
13 insurer exceeds \$25 million and whose liability obligations to other  
14 persons are satisfied in whole or in part by payments made under  
15 P.L.1974, c.17 (C.17:30A et seq.; and

16 (2) Any person who is an affiliate of the insolvent insurer and  
17 whose liability obligations to other persons are satisfied in whole or in  
18 part by payments made under P.L.1974, c.17 (C.17:30A et seq.).

19 (cf: P.L.1979, c.448, s.6)

20  
21 7. Section 12 of P.L.1974, c.17 (C.17:30A-12) is amended to read  
22 as follows:

23 12. a. Any person having a covered claim which may be recovered  
24 from more than one insurance guaranty association or its equivalent  
25 shall ~~seek recovery~~ be required to exhaust first ~~from~~ his rights  
26 under the statute governing the association of the place of residence  
27 of the insured at the time of the insured event except that if it is a first  
28 party claim for damage to property with a permanent location, he shall  
29 seek recovery first from the association of the location of the property.  
30 ~~Any recovery under this act shall be reduced by the amount of~~  
31 ~~recovery from any other insurance guaranty association or its~~  
32 ~~equivalent. However, if~~ If recovery is denied or deferred by ~~the~~  
33 that association, a person may proceed to ~~recover~~ seek recovery  
34 from any other insurance guaranty association or its equivalent from  
35 which recovery may be legally sought.

36 b. Any person having a claim ~~against an insurer, whether or not~~  
37 ~~the insurer is a member insurer, under any provision in~~ , except for  
38 a claim for coverage for personal injury protection benefits issued  
39 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section 4 of  
40 P.L.1998, c.21 (C.39:6A-3.1), under an insurance policy other than a  
41 policy of an insolvent insurer ~~which is also a covered claim~~, shall be  
42 required to exhaust first his right under that other policy. ~~An amount~~  
43 ~~payable on a covered claim under P.L.1974, c.17 (C.17:30A-1 et seq.)~~  
44 shall be reduced by the amount of recovery under any such insurance  
45 policy.]

1     For purposes of this subsection b., a claim under an insurance  
2 policy shall include a claim under any kind of insurance, whether it is  
3 a first-party or third-party claim, and shall include without limitation,  
4 general liability, accident and health insurance, workers'  
5 compensation, health benefits plan coverage, primary and excess  
6 coverage, if applicable, and all other private, group or governmental  
7 coverages except coverage for personal injury protection benefits  
8 issued pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section  
9 4 of P.L.1998, c.21 (C.39:6A-3.1).

10 (cf: P.L.1996, c.156, s.2)

11  
12     8. Section 18 of P.L.1974, c.17 (C.17:30A-18) is amended to read  
13 as follows:

14     18. **[Upon application and notice all]** All proceedings in which the  
15 insolvent insurer is a party or is obligated to defend a party in any  
16 court in this State shall, subject to full or partial waiver by the  
17 association in specific cases involving covered claims, be stayed for  
18 120 days and such additional time thereafter as may be determined by  
19 the court from the date **[the insolvency is determined]** of the order of  
20 liquidation or any ancillary proceeding **[is]** initiated in the State,  
21 whichever is later, to permit proper defense by the association of all  
22 pending causes of action. Public notice of the stay shall be by  
23 publication in three newspapers of general circulation in this State  
24 within 10 days of the order of liquidation. With respect to any  
25 covered claims arising from a judgment under any decision, verdict or  
26 finding based on the default of the insolvent insurer or its failure to  
27 defend an insured, the association either on its own behalf or on behalf  
28 of such insured may apply to have such judgment, order, decision,  
29 verdict or finding set aside by the court in which such judgment, order,  
30 decision, verdict or finding is entered and shall be permitted to defend  
31 against such claim on the merits.

32 (cf: P.L.1979, c.448, s.8)

33  
34     9. This act shall take effect immediately and shall apply to covered  
35 claims resulting from insolvencies occurring on or after that date.

36  
37  
38  
39  
40     \_\_\_\_\_  
41 Makes various revisions to the "New Jersey Property-Liability  
Insurance Guaranty Association Act."

**SENATE, No. 702**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

INTRODUCED JANUARY 26, 2004

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**SYNOPSIS**

Modifies payment cap and definition of covered claim for certain insurance guaranty funds.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning certain covered claims of insolvent insurers and  
2 amending P.L.1974, c.17 and P.L.1984, c.101.

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

6  
7 1. Section 5 of P.L.1974, c.17 (C.17:30A-5) is amended to read as  
8 follows:

9 5. As used in this act:

10 a. (Deleted by amendment.)

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

13 c. "Commissioner" means the Commissioner of Banking and  
14 Insurance of this State;

15 d. "Covered claim" means an unpaid claim, including one of  
16 unearned premiums, which arises out of and is within the coverage,  
17 and not in excess of the applicable limits of an insurance policy to  
18 which this act applies, issued by an insurer, if such insurer becomes an  
19 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
20 is a resident of this State at the time of the insured event; or (2) the  
21 property from which the claim arises is permanently located in this  
22 State. "Covered claim" shall not include any amount due any  
23 reinsurer, insurer, insurance pool, or underwriting association, as  
24 subrogation recoveries or otherwise; provided, that a claim for any  
25 such amount, asserted against a person insured under a policy issued  
26 by an insurer which has become an insolvent insurer, which, if it were  
27 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
28 or underwriting association, would be a "covered claim," may be filed  
29 directly with the receiver of the insolvent insurer, but in no event may  
30 any such claim be asserted in any legal action against the insured of  
31 such insolvent insurer.

32 A "covered claim" shall not include amounts for interest on  
33 unliquidated claims, punitive damages unless covered by the policy,  
34 counsel fees for prosecuting suits for claims against the association,  
35 and assessments or charges for failure of such insolvent insurer to have  
36 expeditiously settled claims.

37 A "covered claim" shall not include a claim filed with the  
38 association after the final date set by the court for the filing of claims  
39 against the liquidator or receiver of an insolvent insurer unless the  
40 claimant demonstrates unusual hardship and the commissioner  
41 approves of treatment of the claim as a "covered claim." "Unusual  
42 hardship" shall be defined in regulations promulgated by the  
43 commissioner. With respect to insurer insolvencies pending as of the

**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 effective date of this 1996 amendatory act, a "covered claim" shall not  
2 include a claim filed with the association: (1) more than one year after  
3 the effective date of this 1996 amendatory act or (2) the date set by  
4 the court for the filing of claims against the liquidator or receiver of  
5 the insolvent insurer, whichever date occurs later;

6 A "covered claim" shall not include a first or third party claim  
7 brought by or against an insured, other than a public entity as defined  
8 in N.J.S.59:1-3, if the aggregate net worth of the insured and any  
9 affiliate of the insured, as calculated on a consolidated basis, is more  
10 than \$25,000,000 on December 31 of the year immediately preceding  
11 the date the insurer becomes an insolvent insurer.

12 e. "Insolvent insurer" means (1) a licensed insurer admitted  
13 pursuant to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1  
14 et seq., or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business  
15 of insurance in this State either at the time the policy was issued or  
16 when the insured event occurred, and (2) which is determined to be  
17 insolvent by the court of competent jurisdiction. "Insolvent insurer"  
18 does not include any unauthorized or nonadmitted insurer whether or  
19 not deemed eligible for surplus lines pursuant to P.L.1960, c.32  
20 (C.17:22-6.37 et seq.);

21 f. "Member insurer" means any person who (1) writes any kind of  
22 insurance to which this act applies under section 2 b. including the  
23 exchange of reciprocal or interinsurance contracts and (2) is a licensed  
24 insurer admitted or authorized to transact the business of insurance in  
25 this State. "Member insurer" does not include any unauthorized or  
26 nonadmitted insurer whether or not deemed eligible for surplus lines  
27 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

28 g. "Net direct written premiums" means direct gross premiums  
29 written in this State on insurance policies to which this act applies, less  
30 return premiums thereon and dividends paid or credited to  
31 policyholders on such direct business. "Net direct written premiums"  
32 does not include premiums on contracts between insurers or  
33 reinsurers, and does not include premiums on policies issued by an  
34 insurer as a member of the New Jersey Insurance Underwriting  
35 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.).  
36 (cf: P.L.1996, c.156, s.1)

37  
38 2. Section 3 of P.L.1984, c.101 (C.17:22-6.72) is amended to read  
39 as follows:

40 3. a. "Association" means the New Jersey Property-Liability  
41 Insurance Guaranty Association created pursuant to P.L.1974, c.17  
42 (C.17:30A-1 et seq.).

43 b. "Covered claim" means an unpaid claim, including a claim for  
44 unearned premiums, which arises out of and is within the coverage,  
45 and not in excess of the applicable limits of an insurance policy to  
46 which this act applies, and which was issued by a surplus lines insurer

1 which was eligible to transact insurance business in this State at the  
2 time the policy was issued and which has been determined to be an  
3 insolvent insurer on or after June 1, 1984, but prior to June 25 2002,  
4 if (1) the claimant or policyholder is a resident of this State at the time  
5 of the occurrence of the insured event for which a claim has been  
6 made, or (2) the property from which the claim arises is permanently  
7 located in this State. A "covered claim" which arises because of an  
8 insolvency occurring on or after June 25, 2002 shall be limited to an  
9 unpaid claim, including a claim for unearned premiums, which arises  
10 out of either medical malpractice liability insurance coverage or  
11 property insurance covering owner occupied dwellings of less than  
12 four dwelling units within the coverage, and not in excess of the  
13 applicable limits, of an insurance policy to which P.L.1984, c.101  
14 (C.17:22-6.70 et seq.) applies, and which was issued by a surplus lines  
15 insurer which was eligible to transact insurance business in this State  
16 at the time the policy was issued and which has been determined to be  
17 an insolvent insurer on or after June 25, 2002, if (1) the claimant or  
18 policyholder is a resident of this State at the time of the occurrence of  
19 the insured event for which a claim has been made, or (2) the property  
20 from which the claim arises is permanently located in this State.

21 "Covered claim" shall not include any amount due any reinsurer,  
22 insurance pool or underwriting association, as subrogation recoveries  
23 or otherwise, except that a claim for any such amount, asserted against  
24 a person insured under a policy issued by a surplus lines insurer which  
25 has become an insolvent insurer, which, if it were not a claim by or for  
26 the benefit of a reinsurer, insurer, insurance pool, or underwriting  
27 association, would be a "covered claim," may be filed directly with the  
28 receiver of the insolvent insurer, but in no event may any such claim  
29 be asserted in any legal action against the insured of that insolvent  
30 insurer. "Covered claim" shall also not include amounts for interest on  
31 unliquidated claims, punitive damages unless covered by the policy,  
32 counsel fees for prosecuting suits for claims against the fund, and  
33 assessments or charges for failure by an insolvent insurer to have  
34 expeditiously settled claims.

35 A "covered claim" shall not include a claim filed with the fund after  
36 the final date set by the court for the filing of claims against the  
37 liquidator or receiver of an insolvent insurer unless the claimant  
38 demonstrates unusual hardship and the commissioner approves of  
39 treatment of the claim as a "covered claim." "Unusual hardship" shall  
40 be defined in regulations promulgated by the commissioner. With  
41 respect to insurer insolvencies pending as of the effective date of this  
42 1996 amendatory act, a "covered claim" shall not include a claim filed  
43 with the fund: (1) more than one year after the effective date of this  
44 1996 amendatory act or (2) the date set by the court for the filing of  
45 claims against the liquidator or receiver of the insolvent insurer,  
46 whichever date occurs later.



1 (PLIGA) or the New Jersey Surplus Lines Insurance Guaranty Fund.  
2 Under the bill, participation in these guaranty funds is limited to those  
3 private entities with a net worth of \$25 million or less.

4 The purpose of guaranty funds is to provide certain protections for  
5 insureds who have purchased coverage from insurance companies that  
6 ultimately lack the financial resources to pay claims due to insolvency.  
7 In this State, PLIGA takes over management and payment of the  
8 insolvent insurer's outstanding claims. PLIGA then assesses the  
9 remaining financially sound companies doing business in New Jersey  
10 in order to meet its obligations. Those companies, in turn, may find  
11 it necessary to recoup those assessments from their policyholders.

12 While designed as a consumer protection device, unlimited access  
13 to guaranty funds can actually foster insolvencies by encouraging  
14 irresponsible behavior by insurers in the marketplace. This occurs  
15 particularly in so-called "soft markets" when there is an abundance of  
16 insurance capacity. In such markets, certain insurers seeking to turn  
17 quick profits or gain market share may abandon sound underwriting  
18 principals and slash rates in order to compete for premium. Some  
19 insureds, in turn, will forego more expensive coverage from those  
20 companies that will not trade market share for sound underwriting.  
21 All too often, those insureds have the resources and expertise to shop  
22 responsibly, but fail to do so knowing they have the guaranty fund as  
23 a safety net for their speculative conduct. When this occurs,  
24 responsible companies suffer in two ways. First, they are required to  
25 pass on business that they refuse to sell at cut-rate prices. Second,  
26 these companies and their policyholders are ultimately required to pay  
27 the claims of the irresponsible companies that inevitably become  
28 insolvent.

29 This bill's \$25 million net worth exclusion allows the guaranty funds  
30 to bar claims from individuals or companies that have a net worth in  
31 excess of that amount. The \$25 million limit is endorsed by the  
32 National Association of Insurance Commissioners (NAIC), which has  
33 included this limit in its model act. This approach thus encourages  
34 sophisticated insureds with the resources to shop prudently to do so,  
35 and avoid shifting the burden of their losses to responsible companies  
36 and their policyholders.

**SENATE, No. 1580**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MAY 10, 2004

**Sponsored by:**  
**Senator NIA H. GILL**  
**District 34 (Essex and Passaic)**

**SYNOPSIS**

Makes various revisions to the "New Jersey Property-Liability Insurance Guaranty Association Act."

**CURRENT VERSION OF TEXT**

As introduced.



S1580 GILL

2

1 AN ACT concerning the New Jersey Property-Liability Insurance  
2 Guaranty Association and amending P.L.1974, c.17.

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.1974, c.17 (C.17:30A-2) is amended to read as  
8 follows:

9 2. a. The purpose of this act is to provide a mechanism for the  
10 payment of covered claims under certain insurance policies, to avoid  
11 excessive delay in payment, to [avoid] minimize financial loss to  
12 claimants or policyholders because of the insolvency of an insurer, to  
13 assist in the detection and prevention of insurer insolvencies, to  
14 provide an association to assess the cost of such protection among  
15 insurers, and to provide a mechanism to run off, manage, administer  
16 and pay claims asserted against the Unsatisfied Claim and Judgment  
17 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the  
18 New Jersey Automobile Full Insurance Underwriting Association,  
19 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the  
20 Market Transition Facility, created pursuant to section 88 of P.L.1990,  
21 c.8 (C.17:33B-11).

22 b. This act shall apply to all kinds of direct insurance, except life  
23 insurance, accident and health insurance, workers' compensation  
24 insurance, title insurance, annuities, surety bonds, credit insurance,  
25 mortgage guaranty insurance, municipal bond coverage, fidelity  
26 insurance, investment return assurance, ocean marine insurance and  
27 pet health insurance.  
28 (cf: P.L.2003, c.89, s.2)

29

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

32 5. As used in this act:

33 [a. (Deleted by amendment.)

34 b.] "Affiliate" means a person who directly, or indirectly, through  
35 one or more intermediaries, controls, is controlled by, or is under  
36 common control with an insolvent insurer on December 31 of the year  
37 immediately preceding the date the insurer becomes an insolvent  
38 insurer;

39 "Association" means the New Jersey Property-Liability Insurance  
40 Guaranty Association created under section 6;

41 [c.] "Commissioner" means the Commissioner of Banking and  
42 Insurance of 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        [d.] "Covered claim" means an unpaid claim, including one of  
2 unearned premiums, which arises out of and is within the coverage,  
3 and not in excess of the applicable limits of an insurance policy to  
4 which this act applies, issued by an insurer, if such insurer becomes an  
5 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
6 is a resident of this State at the time of the insured event provided that  
7 for an entity other than an individual, the residence of the claimant or  
8 insured is the state in which its principal place of business was located  
9 at the time of the insured event; or (2) [the property from which the  
10 claim arises is permanently located] the claim is a first party claim  
11 made by an insured for damage to property with a permanent location  
12 in this State.

13        "Covered claim" shall not include: (1) any amount due any  
14 reinsurer, insurer, insurance pool, or underwriting association, as  
15 subrogation recoveries or otherwise; provided, that a claim for any  
16 such amount, asserted against a person insured under a policy issued  
17 by an insurer which has become an insolvent insurer, which, if it were  
18 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
19 or underwriting association, would be a "covered claim," may be filed  
20 directly with the receiver of the insolvent insurer, but in no event may  
21 any such claim be asserted in any legal action against the insured of  
22 such insolvent insurer[.

23        A "covered claim" shall not include]; (2) amounts for interest on  
24 unliquidated claims[, ] ; (3) punitive damages unless covered by the  
25 policy[, ] ; (4) counsel fees for prosecuting suits for claims against the  
26 association[, and] ; (5) assessments or charges for failure of such  
27 insolvent insurer to have expeditiously settled claims[.

28        A "covered claim" shall not include]; (6) counsel fees and other  
29 claim expenses incurred prior to the date of insolvency; (7) a claim  
30 filed with the association, liquidator or receiver of an insolvent insurer  
31 after the final date set by the court for the filing of claims against the  
32 liquidator or receiver of an insolvent insurer or, in the event a final  
33 date is not set by the court for the filing of claims against the  
34 liquidator or receiver of an insolvent insurer, two years from the date  
35 of the order of liquidation, unless the claimant demonstrates unusual  
36 hardship and the commissioner approves of treatment of the claim as  
37 a "covered claim." "Unusual hardship" shall be defined in regulations  
38 promulgated by the commissioner. With respect to insurer  
39 insolvencies pending as of the effective date of [this 1996 amendatory  
40 act] P.L. , c. (now before the Legislature as this bill), a "covered  
41 claim" shall not include a claim filed with the association, liquidator or  
42 receiver of an insolvent insurer: [(1)] (a) more than one year after the  
43 effective date of [this 1996 amendatory act] P.L. , c. (now before  
44 the Legislature as this bill); or [(2)] (b) the date set by the court for  
45 the filing of claims against the liquidator or receiver of the insolvent

1 insurer, whichever date occurs later;

2 [e.] and (8) any first party claim by an insured whose net worth  
3 exceeds \$25 million on December 31 of the year prior to the year in  
4 which the insurer becomes an insolvent insurer; provided that an  
5 insured's net worth on that date shall be deemed to include the  
6 aggregate net worth of the insured and all of its affiliates as calculated  
7 on a consolidated basis;

8 "Credit insurance" means credit life, credit disability, credit  
9 property, credit unemployment, involuntary unemployment, mortgage  
10 life, mortgage guaranty, mortgage disability, automobile dealer gap  
11 insurance and any other form of insurance offered in connection with  
12 an extension of credit that the commissioner determines should be  
13 designated a form of credit insurance.

14 "Exhaust" means with respect to other insurance, the application of  
15 a credit for the maximum limit under the policy, except that in any case  
16 in which continuous indivisible injury or property damage occurs over  
17 a period of years as a result of exposure to injurious conditions,  
18 exhaustion shall be deemed to have occurred only after a credit for the  
19 maximum limits under all other coverages, primary and excess, if  
20 applicable, issued in all other years has been applied. With respect to  
21 health insurance and workers' compensation insurance, "exhaust"  
22 means the application of a credit for the amount of recovery under the  
23 insurance policy. With respect to another insurance guaranty  
24 association or its equivalent, "exhaust" means the application of a  
25 credit for the maximum statutory limit of recovery from that other  
26 guaranty association or its equivalent. The amount of a covered claim  
27 payable by the association shall be reduced by the amount of any  
28 applicable credits;

29 "Insolvent insurer" means (1) a licensed insurer admitted pursuant  
30 to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1 et seq.,  
31 or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business of  
32 insurance in this State either at the time the policy was issued or when  
33 the insured event occurred, and (2) [which is determined to be  
34 insolvent] against whom an order of liquidation has been entered with  
35 a finding of insolvency by [the] a court of competent jurisdiction.  
36 "Insolvent insurer" does not include any unauthorized or nonadmitted  
37 insurer whether or not deemed eligible for surplus lines pursuant to  
38 P.L.1960, c.32 (C.17:22-6.37 et seq.);

39 [f.] "Member insurer" means any person who (1) writes any kind  
40 of insurance to which this act applies under section 2 b. including the  
41 exchange of reciprocal or interinsurance contracts and (2) is a licensed  
42 insurer admitted or authorized to transact the business of insurance in  
43 this State. "Member insurer" does not include any unauthorized or  
44 nonadmitted insurer whether or not deemed eligible for surplus lines  
45 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

46 [g.] "Net direct written premiums" means direct gross premiums



1 written in this State on insurance policies to which this act applies, less  
2 return premiums thereon and dividends paid or credited to  
3 policyholders on such direct business. "Net direct written premiums"  
4 does not include premiums on contracts between insurers or  
5 reinsurers, and does not include premiums on policies issued by an  
6 insurer as a member of the New Jersey Insurance Underwriting  
7 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

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

21 "Person" means any individual, corporation, partnership, association  
22 or voluntary organization.

23 (cf: P.L.1996, c.156, s.1)

24

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

27 6. There is created a private, nonprofit, unincorporated, legal entity  
28 to be known as the New Jersey Property-Liability Insurance Guaranty  
29 Association. All insurers defined as member insurers in [subsection]  
30 section 5 [f.] shall be and remain members of the association as a  
31 condition of their authority to transact insurance in this State. The  
32 association shall perform its functions under a plan of operation  
33 established and approved under section 9 and shall exercise its powers  
34 through a board of directors established under section 7.

35 The association is also authorized and shall have all of the powers  
36 necessary and appropriate for the management and administration of  
37 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,  
38 in accordance with the provisions of the "New Jersey Surplus Lines  
39 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et  
40 seq.).

41 The association is also authorized and shall have all of the powers  
42 necessary and appropriate for the management and administration of  
43 the affairs of, and the payment of valid claims asserted against: the  
44 Unsatisfied Claim and Judgment Fund, created pursuant to the  
45 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey  
46 Automobile Full Insurance Underwriting Association, created pursuant

1 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the  
2 Market Transition Facility created pursuant to the provisions of  
3 section 88 of P.L.1990, c.8 (C.17:33B-11).  
4 (cf: P.L.2003, c.89, s.3)

5

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

8 8. a. The association shall:

9 (1) Be obligated to the extent of the covered claims against an  
10 insolvent insurer incurred [, in the case of private passenger  
11 automobile insurance, prior to or after the determination of insolvency,  
12 but before the policy expiration date or the date upon which the  
13 insured replaces the policy or causes its cancellation, or in the case of  
14 insurance other than private passenger automobile insurance, covered  
15 claims against such insolvent insurer incurred] prior to or 90 days  
16 after the determination of insolvency, or before the policy expiration  
17 date if less than 90 days after said determination, or before the insured  
18 replaces the policy or causes its cancellation, if he does so within 90  
19 days of the determination, [but such] except that in the case of private  
20 passenger automobile insurance, the commissioner may, depending  
21 upon factors such as the level of that insurance written by the insolvent  
22 insurer, the volume of claims arising under that insurance, and  
23 conditions currently relating to the voluntary market for that insurance  
24 in this State, order the association to treat all or a portion of claims  
25 arising under that insurance as covered claims if they are incurred prior  
26 to or after the determination of insolvency, but before the policy  
27 expiration date or the date upon which the insured replaces the policy  
28 or causes its cancellation, and otherwise qualify as covered claims  
29 under the act. That obligation shall include only that amount of each  
30 covered claim which is less than \$300,000.00 per claimant and subject  
31 to any applicable deductible and self-insured retention contained in the  
32 policy, except that the \$300,000.00 limitation shall not apply to a  
33 covered claim arising out of insurance coverage mandated by section  
34 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under  
35 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the  
36 association shall be liable for payment of benefits in an amount not to  
37 exceed the amount set forth in section 4 of P.L.1972, c.70  
38 (C.39:6A-4). The commissioner may adjust or defer the association's  
39 obligations for covered claims based on the monies available to the  
40 association. In no event shall the association be obligated to a  
41 policyholder or claimant in an amount in excess of the limits of liability  
42 stated in the policy of the insolvent insurer from which the claim  
43 arises. Any obligation of the association to defend an insured shall  
44 cease upon the association's payment or tender of an amount equal to  
45 the lesser of the association's covered claim statutory limit or the  
46 applicable policy limit;

1 (2) Be deemed the insurer to the extent of its obligation on the  
2 covered claims and to such extent shall have all rights, duties, and  
3 obligations of the insolvent insurer as if the insurer had not become  
4 insolvent;

5 (3) Assess member insurers in amounts necessary to pay:

6 (a) The obligations of the association under paragraphs (1) and  
7 (11) of this subsection;

8 (b) The expenses of handling covered claims;

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

10 (d) Other expenses authorized by this act[, excluding expenses  
11 incurred by the association pursuant to paragraphs (9) and (10) of this  
12 subsection].

13 The assessments of each member insurer shall be in the proportion  
14 that the net direct written premiums of the member insurer for the  
15 calendar year preceding the assessment bears to the net direct written  
16 premiums of all member insurers for the calendar year preceding the  
17 assessment.

18 Each member insurer shall be notified of the assessment not later  
19 than 30 days before it is due. No member insurer of the association  
20 may be assessed pursuant to this paragraph (3) in any year in an  
21 amount greater than 2% of that member insurer's net direct written  
22 premiums for the calendar year preceding the assessment with regard  
23 to the association's obligation to pay covered claims and related  
24 expenses arising under coverages issued by insolvent insurers pursuant  
25 to P.L.1974, c.17 (C.17:30A-1 et seq.).

26 The association may, subject to the approval of the commissioner,  
27 exempt, abate or defer, in whole or in part, the assessment of any  
28 member insurer, if the assessment would cause the member insurer's  
29 financial statement to reflect amounts of capital or surplus less than  
30 the minimum amounts required for a certificate of authority by any  
31 jurisdiction in which the member insurer is authorized to transact  
32 insurance. In the event an assessment against a member insurer is  
33 exempted, abated, or deferred, in whole or in part, because of the  
34 limitations set forth in this section, the amount by which such  
35 assessment is exempted, abated, or deferred shall be assessed against  
36 the other member insurers in a manner consistent with the basis for  
37 assessments set forth in this section. If the maximum assessment,  
38 together with the other assets of the association, does not provide in  
39 any one year an amount sufficient to carry out the responsibilities of  
40 the association, the necessary additional funds shall be assessed as  
41 soon thereafter as it is permitted by this act. Each member insurer  
42 serving as a servicing facility may set off against any assessment,  
43 authorized payments made on covered claims and expenses incurred  
44 in the payment of such claims by such member insurer;

45 (4) Investigate claims brought against the association and adjust,  
46 compromise, settle, and pay covered claims to the extent of the

1 association's obligation and deny all other claims and may review  
2 settlements, releases and judgments to which the insolvent insurer or  
3 its insureds were parties to determine the extent to which such  
4 settlements, releases and judgments may be properly contested;

5 (5) Notify such persons as the commissioner directs under  
6 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17  
7 (C.17:30A-10);

8 (6) Handle claims through its employees or through one or more  
9 insurers or other persons designated as servicing facilities. Designation  
10 of a servicing facility is subject to the approval of the commissioner,  
11 but such designation may be declined by a member insurer. The  
12 association is designated as a servicing facility for the administration  
13 of claim obligations of: (a) the New Jersey Surplus Lines Insurance  
14 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance  
15 Association; and (c) the Unsatisfied Claim and Judgment Fund. The  
16 association may also be designated or may contract as a servicing  
17 facility for any other entity which may be recommended by the  
18 association's board of directors and approved by the commissioner;

19 (7) Reimburse each servicing facility for obligations of the  
20 association paid by the facility and for expenses incurred by the facility  
21 while handling claims on behalf of the association and shall pay the  
22 other expenses of the association authorized by this act;

23 (8) Make loans to the New Jersey Surplus Lines Insurance  
24 Guaranty Fund and the Unsatisfied Claim and Judgment Fund **[is] in**  
25 such amounts and on such terms as the board of directors may  
26 determine are necessary or appropriate to effectuate the purposes of  
27 P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance with the plan of  
28 operation; provided, however, no such loan transaction shall be  
29 authorized to the extent the federal tax exemption of the association  
30 would be withdrawn or the association would otherwise incur any  
31 federal tax or penalty as a result of such transaction;

32 (9) **[Assess member insurers in amounts necessary to make loans**  
33 pursuant to paragraph (10) of this subsection. The estimated  
34 assessments of each member insurer shall be in the proportion that the  
35 net direct written premiums of the member insurer for the calendar  
36 year preceding the assessment bears to the net direct written premiums  
37 of all member insurers for the calendar year preceding the assessment  
38 with actual assessments adjusted in the succeeding year based on the  
39 proportion that the assessed member insurer's net direct written  
40 premiums in the year of assessment bears to the net direct written  
41 premiums of all member insurers for that year.

42 (a) For the purposes of this paragraph, "net direct written  
43 premiums" shall not include medical malpractice liability insurance  
44 premiums paid to member insurers to which an additional charge has  
45 been applied for deposit in the New Jersey Medical Malpractice  
46 Reinsurance Recovery Fund as provided in the "Medical Malpractice

1 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the  
2 regulations promulgated pursuant thereto.

3 (b) In the event that the commissioner certifies that loans in  
4 amounts less than \$160 million per calendar year as provided in  
5 paragraph (10) of this subsection will satisfy the current and  
6 anticipated financial obligations of the Market Transition Facility,  
7 without reference to the amount of funds remaining from the sale of  
8 the Market Transition Facility Senior Lien Revenue Bonds, a member  
9 insurer, and all of its affiliates as defined in subsection a. of section 1  
10 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced  
11 assessment pursuant to this paragraph if the member insurer and all  
12 such affiliates: (i) did not issue or renew a policy of private passenger  
13 automobile insurance in this State on or after January 1, 1973; (ii)  
14 were not assessed as members of the Market Transition Facility as  
15 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had  
16 not relinquished voluntarily any expectation they may have had for the  
17 repayment of loans made pursuant to paragraph (10) of this  
18 subsection, as provided by paragraph (2) of subsection b. of section 6  
19 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or  
20 settlement agreement approved by any court of competent jurisdiction,  
21 on or before the effective date of this 1995 amendatory act. The  
22 reduced assessment of such members shall be equal to their  
23 proportionate share of the difference between the amount certified by  
24 the commissioner and the total of the assessment of all other insurers  
25 subject to such assessment. If the amount of such difference is zero  
26 or less, the reduced assessment shall be zero] (Deleted by amendment,  
27 P.L. \_\_, c. .)

28 (10) [Make loans in the amount of \$160 million per calendar year,  
29 beginning in calendar year 1990, or upon certification by the  
30 commissioner, as provided by paragraph (b) of subsection (9) of this  
31 section, that lesser amounts will satisfy the current and anticipated  
32 financial obligations of the Market Transition Facility, such lesser  
33 amounts as may be collected pursuant to paragraph (9) of this  
34 subsection, to the New Jersey Automobile Insurance Guaranty Fund  
35 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except  
36 that no loan shall be made pursuant to this paragraph after December  
37 31, 1997. In no event shall member insurers subject to assessments  
38 have their financial obligation increased due to reductions granted  
39 pursuant to paragraph (9) of this subsection] (Deleted by amendment,  
40 P.L. \_\_, c. .)

41 (11) Reimburse an insurer for medical expense benefits in excess  
42 of \$75,000 per person per accident as provided in section 2 of  
43 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an  
44 automobile insurance policy issued prior to January 1, 2004;

45 (12) Undertake all of the management, administrative, and claims  
46 activities of the Unsatisfied Claim and Judgment Fund, created

1 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey  
2 Automobile Full Insurance Underwriting Association, created pursuant  
3 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition  
4 Facility, created pursuant to section 88 of P.L.1990, c.8  
5 (C.17:33B-11).

6 b. The association may:

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

9 (2) Borrow and separately account for funds from any source,  
10 including, but not limited to, the New Jersey Surplus Lines Insurance  
11 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such  
12 amounts and on such terms, as the board of directors may determine  
13 are necessary or appropriate to effectuate the purpose of this act in  
14 accordance with the plan of operation; provided, however, no such  
15 borrowing transaction shall be authorized to the extent the federal tax  
16 exemption of the association would be withdrawn or the association  
17 would otherwise incur any federal tax or penalty as a result of such  
18 transaction;

19 (3) Sue or be sued;

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

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

24 (6) Refund to the member insurers in proportion of the  
25 contribution of each member insurer that amount by which the assets  
26 exceed the liabilities if, at the end of any calendar year, the board of  
27 directors finds that the assets of the association exceed the liabilities,  
28 as estimated by the board of directors for the coming year.

29 (cf: P.L.2003, c.89, s.4)

30

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

33 10. a. The commissioner shall:

34 (1) Notify the association of the existence of an insolvent insurer  
35 not later than 3 days after he receives notice of the determination of  
36 the insolvency. The association shall be entitled to a copy of any  
37 complaint seeking an order of liquidation with a finding of insolvency  
38 against a member insurer at the same time that such complaint is filed  
39 with a court of competent jurisdiction;

40 (2) Upon request of the board of directors, provide the association  
41 with a statement of the net direct written premiums of each member  
42 insurer.

43 b. The commissioner may:

44 (1) Require that the association notify the insureds of the insolvent  
45 insurer and any other interested parties of the determination of  
46 insolvency and of their rights under this act. Such notification [may

1 be by mail at their last known address, where available, but if  
2 sufficient information for notification by mail is not available, notice]  
3 shall be by publication in [a newspaper] newspapers of general  
4 circulation [shall be sufficient] as the commissioner shall direct;

5 (2) Suspend or revoke, after notice and hearing, the certificate or  
6 authority to transact insurance in this State of any member insurer  
7 which fails to pay an assessment when due or fails to comply with the  
8 plan of operation. As an alternative, the commissioner may levy a fine  
9 on any member insurer which fails to pay an assessment when due.  
10 Such fine shall not exceed 5% of the unpaid assessment per month,  
11 except that no fine shall be less than \$100.00 per month;

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

14 (cf: P.L.1979, c.448, s.5)

15

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

18 11. a. Any person recovering under this act shall be deemed to  
19 have assigned his rights under the policy to the association to the  
20 extent of his recovery from the association. Every insured or claimant  
21 seeking the protection of this act shall cooperate with the association  
22 to the same extent as such person would have been required to  
23 cooperate with the insolvent insurer. The association shall have no  
24 cause of action against the insured of the insolvent insurer for any  
25 sums it has paid out except such causes of action as the insolvent  
26 insurer would have had if such sums had been paid by the insolvent  
27 insurer. In the case of an insolvent insurer operating on a plan with an  
28 assessment liability, payments of claims of the association shall not  
29 operate to reduce the liability of insureds to the receiver, liquidator, or  
30 statutory successor for unpaid assessments;

31 b. The receiver, liquidator, or statutory successor of an insolvent  
32 insurer shall be bound by settlements of covered claims by the  
33 association or its representatives. The court having jurisdiction shall  
34 grant such claims priority equal to that which the claimant would have  
35 been entitled in the absence of this act against the assets of the  
36 insolvent insurer. The expenses of the association or similar  
37 organization in handling claims shall be accorded the same priority as  
38 the liquidator's expenses;

39 c. The association shall periodically file with the receiver or  
40 liquidator of the insolvent insurer statements of the covered claims  
41 paid by the association and estimates of anticipated claims on the  
42 association which shall preserve the rights of the association against  
43 the assets of the insolvent insurer;

44 d. The liquidator, receiver, or statutory successor of an insolvent  
45 insurer covered by this act shall permit access by the board or its  
46 representative to all of the insolvent insurer's records which would

1 assist the board in carrying out its functions under this act with regard  
2 to covered claims. In addition, the liquidator, receiver, or statutory  
3 successor shall provide the board or its representative with copies or  
4 permit it to make copies of such records upon the request of the  
5 board and at the expense of the board.

6 e. The association shall have the right to recover from the  
7 following persons the amount of any covered claim paid to or on  
8 behalf of that person pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.):

9 (1) An insured whose net worth on December 31 of the year  
10 immediately preceding the date the insurer becomes an insolvent  
11 insurer exceeds \$25 million and whose liability obligations to other  
12 persons are satisfied in whole or in part by payments made under  
13 P.L.1974, c.17 (C.17:30A et seq.; and

14 (2) Any person who is an affiliate of the insolvent insurer and  
15 whose liability obligations to other persons are satisfied in whole or in  
16 part by payments made under P.L.1974, c.17 (C.17:30A et seq.).

17 (cf: P.L.1979, c.448, s.6)

18

19 7. Section 12 of P.L.1974, c.17 (C.17:30A-12) is amended to read  
20 as follows:

21 12. a. Any person having a covered claim which may be recovered  
22 from more than one insurance guaranty association or its equivalent  
23 shall ~~seek recovery~~ be required to exhaust first ~~from~~ his rights  
24 under the statute governing the association of the place of residence  
25 of the insured at the time of the insured event except that if it is a first  
26 party claim for damage to property with a permanent location, he shall  
27 seek recovery first from the association of the location of the property.  
28 ~~[Any recovery under this act shall be reduced by the amount of~~  
29 ~~recovery from any other insurance guaranty association or its~~  
30 ~~equivalent. However, if] If recovery is denied or deferred by ~~[the]~~  
31 that association, a person may proceed to ~~[recover]~~ seek recovery  
32 from any other insurance guaranty association or its equivalent from  
33 which recovery may be legally sought.~~

34 b. Any person having a claim ~~[against an insurer, whether or not~~  
35 ~~the insurer is a member insurer, under any provision in] , except for~~  
36 a claim for coverage for personal injury protection benefits issued  
37 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section 4 of  
38 P.L.1998, c.21 (C.39:6A-3.1), under an insurance policy other than a  
39 policy of an insolvent insurer [which is also a covered claim], shall be  
40 required to exhaust first his right under that other policy. [An amount  
41 payable on a covered claim under P.L.1974, c.17 (C.17:30A-1 et seq.)  
42 shall be reduced by the amount of recovery under any such insurance  
43 policy.]

44 For purposes of this subsection b., a claim under an insurance  
45 policy shall include a claim under any kind of insurance, whether it is



1 a first-party or third-party claim, and shall include without limitation,  
2 general liability, accident and health insurance, workers'  
3 compensation, health benefits plan coverage, primary and excess  
4 coverage, if applicable, and all other private, group or governmental  
5 coverages except coverage for personal injury protection benefits  
6 issued pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section  
7 4 of P.L.1998, c.21 (C.39:6A-3.1).

8 (cf: P.L.1996, c.156, s.2)

9  
10 8. Section 18 of P.L.1974, c.17 (C.17:30A-18) is amended to read  
11 as follows:

12 18. ~~Upon application and notice all~~ All proceedings in which the  
13 insolvent insurer is a party or is obligated to defend a party in any  
14 court in this State shall, subject to full or partial waiver by the  
15 association in specific cases involving covered claims, be stayed for  
16 120 days and such additional time thereafter as may be determined by  
17 the court from the date ~~the insolvency is determined~~ of the order of  
18 liquidation or any ancillary proceeding ~~is~~ is initiated in the State,  
19 whichever is later, to permit proper defense by the association of all  
20 pending causes of action. Public notice of the stay shall be by  
21 publication in three newspapers of general circulation in this State  
22 within 10 days of the order of liquidation. With respect to any  
23 covered claims arising from a judgment under any decision, verdict or  
24 finding based on the default of the insolvent insurer or its failure to  
25 defend an insured, the association either on its own behalf or on behalf  
26 of such insured may apply to have such judgment, order, decision,  
27 verdict or finding set aside by the court in which such judgment, order,  
28 decision, verdict or finding is entered and shall be permitted to defend  
29 against such claim on the merits.

30 (cf: P.L.1979, c.448, s.8)

31  
32 9. This act shall take effect immediately and shall apply to covered  
33 claims resulting from insolvencies occurring on or after that date.

#### 34 35 36 STATEMENT

37  
38 This bill makes various revisions to the "New Jersey Property-  
39 Liability Insurance Guaranty Association Act" (the act). In many  
40 cases, these revisions are designed to align the act more closely with  
41 the provisions of the National Association of Insurance Commissioner  
42 (NAIC) model act.

43 The purpose of the act, as amended by the bill, is to minimize  
44 financial loss to claimants or policyholders because of the insolvency  
45 of a property or casualty insurer. The bill adds certain new definitions  
46 to the act, including the term "affiliate," to recognize the evolution of

1 insurance company ownership. Definitions of "credit insurance" and  
2 "ocean marine reinsurance" are added as well. Several revisions are  
3 made to the definition of "covered claim" to clarify what types of  
4 claims are covered and the types of claims, damages and expenses  
5 which are not covered by the act. The most noteworthy change here,  
6 but one that is not part of the NAIC model act, however, is  
7 eliminating as a "covered claim" any first party claim by an insured  
8 whose net worth exceeds \$25 million on December 31 of the year  
9 prior to the year in which the insurer becomes insolvent. This change  
10 is intended to eliminate the more sophisticated insured from the pool  
11 of claimants, so as to discourage purchase of coverage by such  
12 insureds from insurers who may have "under-priced" a policy to gain  
13 market share at the risk of a resulting insolvency.

14 The bill makes an exception to the act's current provisions for  
15 covered claims of private passenger automobile insurance so that,  
16 depending upon factors such as the volume of that type of insurance  
17 by the insolvent insurer, the volume of claims and conditions in the  
18 voluntary automobile insurance market, the commissioner may order  
19 the New Jersey Property-Liability Insurance Guaranty Association to  
20 treat all or a portion of claims as covered claims, regardless of whether  
21 they are incurred before or after the determination of insolvency, but  
22 before the policy expires or is replaced or canceled by the insured.  
23 The commissioner is also given the discretion to adjust or defer the  
24 association's obligations for covered claims based on the monies  
25 available to the association.

26 The bill also eliminates the responsibility of the association to make  
27 loans to satisfy the financial obligations of the Market Transition  
28 Facility (MTF) and to assess the association's member insurers to  
29 underwrite those loans. The financial obligations of the MTF are  
30 currently in run off and remaining balances in the New Jersey  
31 Automobile Insurance Guaranty Fund are to be transferred to the  
32 General Fund pursuant to P.L.2003, c.89.

33 The bill eliminates the options of the association to notify insureds  
34 of insolvents insurers of their rights under the act by mail and instead  
35 makes publication in newspapers in general circulation the exclusive  
36 form of notification.

37 The bill authorizes the association to recover amounts paid on  
38 covered claim to or on behalf of: (1) an insured whose net worth on  
39 December 31 of the year immediately preceding the date of insolvency  
40 exceeds \$25 million; and (2) an affiliate of the insolvent insurer, if their  
41 liability obligations to other persons are satisfied in whole or in part by  
42 payments made by the association.

43 Other technical and conforming amendments are made to the act as  
44 well.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 702 and 1580**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 23, 2004

The Assembly Financial Institutions and Insurance Committee reports favorably the Senate Committee Substitute for Senate Bill Nos. 702 and 1580.

This substitute bill makes various revisions to the "New Jersey Property-Liability Insurance Guaranty Association Act" (the act). In many cases, these revisions are designed to align the act more closely with the provisions of the National Association of Insurance Commissioners (NAIC) model act.

The purpose of the act, as amended by the bill, is to minimize financial loss to claimants or policyholders because of the insolvency of a property or casualty insurer. The bill adds certain new definitions to the act, including the term "affiliate," to recognize the evolution of insurance company ownership. Definitions of "credit insurance" and "ocean marine reinsurance" are added as well. Several revisions are made to the definition of "covered claim" to clarify what types of claims are covered and the types of claims, damages and expenses which are not covered by the act. Among those revisions, the bill eliminates as a "covered claim" any first party claim by an insured whose net worth exceeds \$25 million on December 31 of the year prior to the year in which the insurer becomes insolvent. This change is intended to eliminate the more sophisticated insured from the pool of claimants, so as to discourage purchase of coverage by such insureds from insurers who may have "under-priced" a policy to gain market share at the risk of a resulting insolvency.

The bill makes an exception to the act's current provisions for covered claims of private passenger automobile insurance so that, depending upon factors such as the volume of that type of insurance by the insolvent insurer, the volume of claims and conditions in the voluntary automobile insurance market, the commissioner may order the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to treat all or a portion of claims as covered claims, regardless of whether they are incurred before or after the determination of insolvency, but before the policy expires or is

replaced or canceled by the insured. The commissioner is also given the discretion to pay a portion of or defer the association's obligations for covered claims based on the monies available to the association.

The bill also eliminates the responsibility of the association to make loans to satisfy the financial obligations of the Market Transition Facility (MTF) and to assess the association's member insurers to underwrite those loans. The financial obligations of the MTF are currently in run off and the remaining balances in the New Jersey Automobile Insurance Guaranty Fund are transferred to PLIGA pursuant to P.L.2003, c.89.

The bill eliminates the option of the association to notify insureds of insolvent insurers of their rights under the act by mail and instead makes publication in newspapers in general circulation the exclusive form of notification.

The bill authorizes the association to recover amounts paid on covered claims to or on behalf of: (1) an insured whose net worth on December 31 of the year immediately preceding the date of insolvency exceeds \$25 million; and (2) an affiliate of the insolvent insurer, if their liability obligations to other persons are satisfied in whole or in part by payments made by the association.

This bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 2462 and 2873, also favorably reported by the committee today.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 702 and 1580**

# **STATE OF NEW JERSEY**

DATED: MAY 17, 2004

The Senate Commerce Committee reports favorably the Senate Committee Substitute for Senate Bill Nos. 702 and 1580.

This substitute bill makes various revisions to the "New Jersey Property-Liability Insurance Guaranty Association Act" (the act). In many cases, these revisions are designed to align the act more closely with the provisions of the National Association of Insurance Commissioners (NAIC) model act.

The purpose of the act, as amended by the bill, is to minimize financial loss to claimants or policyholders because of the insolvency of a property or casualty insurer. The bill adds certain new definitions to the act, including the term "affiliate," to recognize the evolution of insurance company ownership. Definitions of "credit insurance" and "ocean marine reinsurance" are added as well. Several revisions are made to the definition of "covered claim" to clarify what types of claims are covered and the types of claims, damages and expenses which are not covered by the act. Among those revisions, the bill eliminates as a "covered claim" any first party claim by an insured whose net worth exceeds \$25 million on December 31 of the year prior to the year in which the insurer becomes insolvent. This change is intended to eliminate the more sophisticated insured from the pool of claimants, so as to discourage purchase of coverage by such insureds from insurers who may have "under-priced" a policy to gain market share at the risk of a resulting insolvency.

The bill makes an exception to the act's current provisions for covered claims of private passenger automobile insurance so that, depending upon factors such as the volume of that type of insurance by the insolvent insurer, the volume of claims and conditions in the voluntary automobile insurance market, the commissioner may order the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to treat all or a portion of claims as covered claims, regardless of whether they are incurred before or after the determination of insolvency, but before the policy expires or is replaced or canceled by the insured. The commissioner is also given the discretion to pay a portion of or defer the association's obligations for covered claims based on the monies available to the association.

The bill also eliminates the responsibility of the association to make loans to satisfy the financial obligations of the Market Transition Facility (MTF) and to assess the association's member insurers to underwrite those loans. The financial obligations of the MTF are currently in run off and remaining balances in the New Jersey Automobile Insurance Guaranty Fund are to be transferred to the General Fund pursuant to P.L.2003, c.89.

The bill eliminates the option of the association to notify insureds of insolvent insurers of their rights under the act by mail and instead makes publication in newspapers in general circulation the exclusive form of notification.

The bill authorizes the association to recover amounts paid on covered claims to or on behalf of: (1) an insured whose net worth on December 31 of the year immediately preceding the date of insolvency exceeds \$25 million; and (2) an affiliate of the insolvent insurer, if their liability obligations to other persons are satisfied in whole or in part by payments made by the association.

# ASSEMBLY, No. 2462

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 4, 2004

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**SYNOPSIS**

Modifies payment cap and definition of covered claim for certain insurance guaranty funds.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/5/2004)**

1 AN ACT concerning certain covered claims of insolvent insurers and  
2 amending P.L.1974, c.17 and P.L.1984, c.101.

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

6  
7 1. Section 5 of P.L.1974, c.17 (C.17:30A-5) is amended to read as  
8 follows:

9 5. As used in this act:

10 a. (Deleted by amendment.)

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

13 c. "Commissioner" means the Commissioner of Banking and  
14 Insurance of this State;

15 d. "Covered claim" means an unpaid claim, including one of  
16 unearned premiums, which arises out of and is within the coverage,  
17 and not in excess of the applicable limits of an insurance policy to  
18 which this act applies, issued by an insurer, if such insurer becomes an  
19 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
20 is a resident of this State at the time of the insured event; or (2) the  
21 property from which the claim arises is permanently located in this  
22 State. "Covered claim" shall not include any amount due any  
23 reinsurer, insurer, insurance pool, or underwriting association, as  
24 subrogation recoveries or otherwise; provided, that a claim for any  
25 such amount, asserted against a person insured under a policy issued  
26 by an insurer which has become an insolvent insurer, which, if it were  
27 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
28 or underwriting association, would be a "covered claim," may be filed  
29 directly with the receiver of the insolvent insurer, but in no event may  
30 any such claim be asserted in any legal action against the insured of  
31 such insolvent insurer.

32 A "covered claim" shall not include amounts for interest on  
33 unliquidated claims, punitive damages unless covered by the policy,  
34 counsel fees for prosecuting suits for claims against the association,  
35 and assessments or charges for failure of such insolvent insurer to have  
36 expeditiously settled claims.

37 A "covered claim" shall not include a claim filed with the  
38 association after the final date set by the court for the filing of claims  
39 against the liquidator or receiver of an insolvent insurer unless the  
40 claimant demonstrates unusual hardship and the commissioner  
41 approves of treatment of the claim as a "covered claim." "Unusual  
42 hardship" shall be defined in regulations promulgated by the  
43 commissioner. With respect to insurer insolvencies pending as of the

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

**Matter underlined thus is new matter.**



1 effective date of this 1996 amendatory act, a "covered claim" shall not  
2 include a claim filed with the association: (1) more than one year after  
3 the effective date of this 1996 amendatory act or (2) the date set by  
4 the court for the filing of claims against the liquidator or receiver of  
5 the insolvent insurer, whichever date occurs later;

6 A "covered claim" shall not include a first or third party claim  
7 brought by or against an insured, other than a public entity as defined  
8 in N.J.S.59:1-3, if the aggregate net worth of the insured and any  
9 affiliate of the insured, as calculated on a consolidated basis, is more  
10 than \$25,000,000 on December 31 of the year immediately preceding  
11 the date the insurer becomes an insolvent insurer.

12 e. "Insolvent insurer" means (1) a licensed insurer admitted  
13 pursuant to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1  
14 et seq., or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business  
15 of insurance in this State either at the time the policy was issued or  
16 when the insured event occurred, and (2) which is determined to be  
17 insolvent by the court of competent jurisdiction. "Insolvent insurer"  
18 does not include any unauthorized or nonadmitted insurer whether or  
19 not deemed eligible for surplus lines pursuant to P.L.1960, c.32  
20 (C.17:22-6.37 et seq.);

21 f. "Member insurer" means any person who (1) writes any kind of  
22 insurance to which this act applies under section 2 b. including the  
23 exchange of reciprocal or interinsurance contracts and (2) is a licensed  
24 insurer admitted or authorized to transact the business of insurance in  
25 this State. "Member insurer" does not include any unauthorized or  
26 nonadmitted insurer whether or not deemed eligible for surplus lines  
27 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

28 g. "Net direct written premiums" means direct gross premiums  
29 written in this State on insurance policies to which this act applies, less  
30 return premiums thereon and dividends paid or credited to  
31 policyholders on such direct business. "Net direct written premiums"  
32 does not include premiums on contracts between insurers or  
33 reinsurers, and does not include premiums on policies issued by an  
34 insurer as a member of the New Jersey Insurance Underwriting  
35 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.).  
36 (cf: P.L.1996, c.156, s.1)

37

38 2. Section 3 of P.L.1984, c.101 (C.17:22-6.72) is amended to read  
39 as follows:

40 3. a. "Association" means the New Jersey Property-Liability  
41 Insurance Guaranty Association created pursuant to P.L.1974, c.17  
42 (C.17:30A-1 et seq.).

43 b. "Covered claim" means an unpaid claim, including a claim for  
44 unearned premiums, which arises out of and is within the coverage,  
45 and not in excess of the applicable limits of an insurance policy to  
46 which this act applies, and which was issued by a surplus lines insurer

1 which was eligible to transact insurance business in this State at the  
2 time the policy was issued and which has been determined to be an  
3 insolvent insurer on or after June 1, 1984, but prior to June 25 2002,  
4 if (1) the claimant or policyholder is a resident of this State at the time  
5 of the occurrence of the insured event for which a claim has been  
6 made, or (2) the property from which the claim arises is permanently  
7 located in this State. A "covered claim" which arises because of an  
8 insolvency occurring on or after June 25, 2002 shall be limited to an  
9 unpaid claim, including a claim for unearned premiums, which arises  
10 out of either medical malpractice liability insurance coverage or  
11 property insurance covering owner occupied dwellings of less than  
12 four dwelling units within the coverage, and not in excess of the  
13 applicable limits, of an insurance policy to which P.L.1984, c.101  
14 (C.17:22-6.70 et seq.) applies, and which was issued by a surplus lines  
15 insurer which was eligible to transact insurance business in this State  
16 at the time the policy was issued and which has been determined to be  
17 an insolvent insurer on or after June 25, 2002, if (1) the claimant or  
18 policyholder is a resident of this State at the time of the occurrence of  
19 the insured event for which a claim has been made, or (2) the property  
20 from which the claim arises is permanently located in this State.

21 "Covered claim" shall not include any amount due any reinsurer,  
22 insurance pool or underwriting association, as subrogation recoveries  
23 or otherwise, except that a claim for any such amount, asserted against  
24 a person insured under a policy issued by a surplus lines insurer which  
25 has become an insolvent insurer, which, if it were not a claim by or for  
26 the benefit of a reinsurer, insurer, insurance pool, or underwriting  
27 association, would be a "covered claim," may be filed directly with the  
28 receiver of the insolvent insurer, but in no event may any such claim  
29 be asserted in any legal action against the insured of that insolvent  
30 insurer. "Covered claim" shall also not include amounts for interest on  
31 unliquidated claims, punitive damages unless covered by the policy,  
32 counsel fees for prosecuting suits for claims against the fund, and  
33 assessments or charges for failure by an insolvent insurer to have  
34 expeditiously settled claims.

35 A "covered claim" shall not include a claim filed with the fund after  
36 the final date set by the court for the filing of claims against the  
37 liquidator or receiver of an insolvent insurer unless the claimant  
38 demonstrates unusual hardship and the commissioner approves of  
39 treatment of the claim as a "covered claim." "Unusual hardship" shall  
40 be defined in regulations promulgated by the commissioner. With  
41 respect to insurer insolvencies pending as of the effective date of this  
42 1996 amendatory act, a "covered claim" shall not include a claim filed  
43 with the fund: (1) more than one year after the effective date of this  
44 1996 amendatory act or (2) the date set by the court for the filing of  
45 claims against the liquidator or receiver of the insolvent insurer,  
46 whichever date occurs later.

1 "Covered claim" shall not include a first or third party claim  
2 brought by or against an insured, other than a public entity as defined  
3 in N.J.S.59:1-3, if the aggregate net worth of the insured and any  
4 affiliate of the insured, as calculated on a consolidated basis, is more  
5 than \$25,000,000 on December 31 of the year immediately preceding  
6 the date the insurer becomes an insolvent insurer.

7 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty  
8 Fund created pursuant to section 4 of this act.

9 d. "Insolvent insurer" means an insurer which was an eligible  
10 surplus lines insurer at the time the insurance policy was issued or  
11 when the insured event occurred, and which is determined to be  
12 insolvent by a court of competent jurisdiction in this State or the state  
13 or place in which the surplus lines insurer is domiciled. "Insolvent  
14 insurer" does not include an admitted insurer issuing insurance  
15 pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

16 e. "Member insurer" means an eligible, nonadmitted or surplus lines  
17 insurer required to be a member of, and that is subject to, assessments  
18 by the fund.

19 f. "Net direct written premiums" means direct gross premiums on  
20 insurance policies written by a surplus lines insurer to which this act  
21 applies, less return premiums thereon and dividends paid or credited  
22 to policyholders on that direct business. If a policy issued by a surplus  
23 lines insurer covers risks or exposures only partially in this State, the  
24 "net direct written premiums" shall be computed, for assessment  
25 purposes, on that portion of the premium subject to the premium  
26 receipts tax levied in accordance with section 25 of P.L.1960, c.32  
27 (C.17:22-6.59). "Net direct written premiums" do not include  
28 premiums on contracts between insurers or reinsurers.

29 g. "Surplus lines insurer" means a nonadmitted insurer approved as  
30 an eligible, nonadmitted or unauthorized insurer pursuant to section 11  
31 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued  
32 against which a covered claim may be filed in accordance with this act.  
33 (cf: P.L.2002, c.30, s.3)

34  
35 3. This act shall take effect immediately and shall apply only to  
36 covered claims against insurers which become insolvent on or after  
37 that date.

#### 40 STATEMENT

41  
42 This bill provides that a first or third party claim brought by or  
43 against an insured, which is not a public entity, whose net worth  
44 exceeds \$25 million on December 31 of the year prior to the year in  
45 which an insurer becomes insolvent, would not be a claim covered by  
46 the New Jersey Property-Liability Insurance Guaranty Association

1 (PLIGA) or the New Jersey Surplus Lines Insurance Guaranty Fund.  
2 Under the bill, participation in these guaranty funds is limited to those  
3 private entities with a net worth of \$25 million or less.

4 The purpose of guaranty funds is to provide certain protections for  
5 insureds who have purchased coverage from insurance companies that  
6 ultimately lack the financial resources to pay claims due to insolvency.  
7 In this State, PLIGA takes over management and payment of the  
8 insolvent insurer's outstanding claims. PLIGA then assesses the  
9 remaining financially sound companies doing business in New Jersey  
10 in order to meet its obligations. Those companies, in turn, may find  
11 it necessary to recoup those assessments from their policyholders.

12 While designed as a consumer protection device, unlimited access  
13 to guaranty funds can actually foster insolvencies by encouraging  
14 irresponsible behavior by insurers in the marketplace. This occurs  
15 particularly in so-called "soft markets" when there is an abundance of  
16 insurance capacity. In such markets, certain insurers seeking to turn  
17 quick profits or gain market share may abandon sound underwriting  
18 principals and slash rates in order to compete for premium. Some  
19 insureds, in turn, will forego more expensive coverage from those  
20 companies that will not trade market share for sound underwriting.  
21 All too often, those insureds have the resources and expertise to shop  
22 responsibly, but fail to do so knowing they have the guaranty fund as  
23 a safety net for their speculative conduct. When this occurs,  
24 responsible companies suffer in two ways. First, they are required to  
25 pass on business that they refuse to sell at cut-rate prices. Second,  
26 these companies and their policyholders are ultimately required to pay  
27 the claims of the irresponsible companies that inevitably become  
28 insolvent.

29 This bill's \$25 million net worth exclusion allows the guaranty funds  
30 to bar claims from individuals or companies that have a net worth in  
31 excess of that amount. The \$25 million limit is endorsed by the  
32 National Association of Insurance Commissioners (NAIC), which has  
33 included this limit in its model act. This approach thus encourages  
34 sophisticated insureds with the resources to shop prudently to do so,  
35 and avoid shifting the burden of their losses to responsible companies  
36 and their policyholders.

**ASSEMBLY, No. 2873**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MAY 17, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Makes various revisions to the "New Jersey Property-Liability Insurance Guaranty Association Act."

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the New Jersey Property-Liability Insurance  
2 Guaranty Association and amending P.L.1974, c.17.

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.1974, c.17 (C.17:30A-2) is amended to read as  
8 follows:

9 2. a. The purpose of this act is to provide a mechanism for the  
10 payment of covered claims under certain insurance policies, to avoid  
11 excessive delay in payment, to [avoid] minimize financial loss to  
12 claimants or policyholders because of the insolvency of an insurer, to  
13 assist in the detection and prevention of insurer insolvencies, to  
14 provide an association to assess the cost of such protection among  
15 insurers, and to provide a mechanism to run off, manage, administer  
16 and pay claims asserted against the Unsatisfied Claim and Judgment  
17 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the  
18 New Jersey Automobile Full Insurance Underwriting Association,  
19 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the  
20 Market Transition Facility, created pursuant to section 88 of P.L.1990,  
21 c.8 (C.17:33B-11).

22 b. This act shall apply to all kinds of direct insurance, except life  
23 insurance, accident and health insurance, workers' compensation  
24 insurance, title insurance, annuities, surety bonds, credit insurance,  
25 mortgage guaranty insurance, municipal bond coverage, fidelity  
26 insurance, investment return assurance, ocean marine insurance and  
27 pet health insurance.  
28 (cf: P.L.2003, c.89, s.2)

29  
30 2. Section 5 of P.L.1974, c.17(C.17:30A-5) is amended to read as  
31 follows:

32 5. As used in this act:

33 [a. (Deleted by amendment.)

34 b.] "Affiliate" means a person who directly, or indirectly, through  
35 one or more intermediaries, controls, is controlled by, or is under  
36 common control with an insolvent insurer on December 31 of the year  
37 immediately preceding the date the insurer becomes an insolvent  
38 insurer;

39 "Association" means the New Jersey Property-Liability Insurance  
40 Guaranty Association created under section 6;

41 [c.] "Commissioner" means the Commissioner of Banking and  
42 Insurance of 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       [d.] "Covered claim" means an unpaid claim, including one of  
2 unearned premiums, which arises out of and is within the coverage,  
3 and not in excess of the applicable limits of an insurance policy to  
4 which this act applies, issued by an insurer, if such insurer becomes an  
5 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
6 is a resident of this State at the time of the insured event provided that  
7 for an entity other than an individual, the residence of the claimant or  
8 insured is the state in which its principal place of business was located  
9 at the time of the insured event; or (2) [the property from which the  
10 claim arises is permanently located] the claim is a first party claim  
11 made by an insured for damage to property with a permanent location  
12 in this State.

13       "Covered claim" shall not include: (1) any amount due any  
14 reinsurer, insurer, insurance pool, or underwriting association, as  
15 subrogation recoveries or otherwise; provided, that a claim for any  
16 such amount, asserted against a person insured under a policy issued  
17 by an insurer which has become an insolvent insurer, which, if it were  
18 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
19 or underwriting association, would be a "covered claim," may be filed  
20 directly with the receiver of the insolvent insurer, but in no event may  
21 any such claim be asserted in any legal action against the insured of  
22 such insolvent insurer[.

23       A "covered claim" shall not include]; (2) amounts for interest on  
24 unliquidated claims[.]; (3) punitive damages unless covered by the  
25 policy[.]; (4) counsel fees for prosecuting suits for claims against the  
26 association[, and] (5) assessments or charges for failure of such  
27 insolvent insurer to have expeditiously settled claims[.

28       A "covered claim" shall not include]; (6) counsel fees and other  
29 claim expenses incurred prior to the date of insolvency; (7) a claim  
30 filed with the association, liquidator or receiver of an insolvent insurer  
31 after the final date set by the court for the filing of claims against the  
32 liquidator or receiver of an insolvent insurer or, in the event a final  
33 date is not set by the court for the filing of claims against the  
34 liquidator or receiver of an insolvent insurer, two years from the date  
35 of the order of liquidation, unless the claimant demonstrates unusual  
36 hardship and the commissioner approves of treatment of the claim as  
37 a "covered claim." "Unusual hardship" shall be defined in regulations  
38 promulgated by the commissioner. With respect to insurer  
39 insolvencies pending as of the effective date of [this 1996 amendatory  
40 act] P.L. ., c. (now before the Legislature as this bill), a "covered  
41 claim" shall not include a claim filed with the association, liquidator or  
42 receiver of an insolvent insurer: [(1)] (a) more than one year after the  
43 effective date of [this 1996 amendatory act] P.L. ., c. (now before  
44 the Legislature as this bill); or [(2)] (b) the date set by the court for  
45 the filing of claims against the liquidator or receiver of the insolvent

1 insurer, whichever date occurs later;

2 [e.] and (8) any first party claim by an insured whose net worth  
3 exceeds \$50 million on December 31 of the year prior to the year in  
4 which the insurer becomes an insolvent insurer; provided that an  
5 insured's net worth on that date shall be deemed to include the  
6 aggregate net worth of the insured and all of its affiliates as calculated  
7 on a consolidated basis;

8 "Credit insurance" means credit life, credit disability, credit  
9 property, credit unemployment, involuntary unemployment, mortgage  
10 life, mortgage guaranty, mortgage disability, automobile dealer gap  
11 insurance and any other form of insurance offered in connection with  
12 an extension of credit that the commissioner determines should be  
13 designated a form of credit insurance.

14 "Exhaust" means with respect to other insurance, the application of  
15 a credit for the maximum limit under the policy, except that in any case  
16 in which continuous indivisible injury or property damage occurs over  
17 a period of years as a result of exposure to injurious conditions,  
18 exhaustion shall be deemed to have occurred only after a credit for the  
19 maximum limits under all other coverages, primary and excess, if  
20 applicable, issued in all other years has been applied. With respect to  
21 health insurance and workers' compensation insurance, "exhaust"  
22 means the application of a credit for the amount of recovery under the  
23 insurance policy. With respect to another insurance guaranty  
24 association or its equivalent, "exhaust" means the application of a  
25 credit for the maximum statutory limit of recovery from that other  
26 guaranty association or its equivalent. The amount of a covered claim  
27 payable by the association shall be reduced by the amount of any  
28 applicable credits;

29 "Insolvent insurer" means (1) a licensed insurer admitted pursuant  
30 to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1 et seq.,  
31 or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business of  
32 insurance in this State either at the time the policy was issued or when  
33 the insured event occurred, and (2) [which is determined to be  
34 insolvent] against whom an order of liquidation has been entered with  
35 a finding of insolvency by [the] a court of competent jurisdiction.  
36 "Insolvent insurer" does not include any unauthorized or nonadmitted  
37 insurer whether or not deemed eligible for surplus lines pursuant to  
38 P.L.1960, c.32 (C.17:22-6.37 et seq.);

39 [f.] "Member insurer" means any person who (1) writes any kind  
40 of insurance to which this act applies under section 2 b. including the  
41 exchange of reciprocal or interinsurance contracts and (2) is a licensed  
42 insurer admitted or authorized to transact the business of insurance in  
43 this State. "Member insurer" does not include any unauthorized or  
44 nonadmitted insurer whether or not deemed eligible for surplus lines  
45 pursuant to P.L.1960, c.32 (C.17:22-6.37 et seq.);

46 [g.] "Net direct written premiums" means direct gross premiums



1 written in this State on insurance policies to which this act applies, less  
2 return premiums thereon and dividends paid or credited to  
3 policyholders on such direct business. "Net direct written premiums"  
4 does not include premiums on contracts between insurers or  
5 reinsurers, and does not include premiums on policies issued by an  
6 insurer as a member of the New Jersey Insurance Underwriting  
7 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

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

21 "Person" means any individual, corporation, partnership, association  
22 or voluntary organization.

23 (cf: P.L.1996, c.156, s.1)

24

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

27 6. There is created a private, nonprofit, unincorporated, legal entity  
28 to be known as the New Jersey Property-Liability Insurance Guaranty  
29 Association. All insurers defined as member insurers in [subsection]  
30 section 5 [f.] shall be and remain members of the association as a  
31 condition of their authority to transact insurance in this State. The  
32 association shall perform its functions under a plan of operation  
33 established and approved under section 9 and shall exercise its powers  
34 through a board of directors established under section 7.

35 The association is also authorized and shall have all of the powers  
36 necessary and appropriate for the management and administration of  
37 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,  
38 in accordance with the provisions of the "New Jersey Surplus Lines  
39 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et  
40 seq.).

41 The association is also authorized and shall have all of the powers  
42 necessary and appropriate for the management and administration of  
43 the affairs of, and the payment of valid claims asserted against: the  
44 Unsatisfied Claim and Judgment Fund, created pursuant to the  
45 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey  
46 Automobile Full Insurance Underwriting Association, created pursuant

1 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the  
2 Market Transition Facility created pursuant to the provisions of  
3 section 88 of P.L.1990, c.8 (C.17:33B-11).  
4 (cf: P.L.2003, c.89, s.3)

5  
6 4. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read  
7 as follows:

8 8. a. The association shall:

9 (1) Be obligated to the extent of the covered claims against an  
10 insolvent insurer incurred [, in the case of private passenger  
11 automobile insurance, prior to or after the determination of insolvency,  
12 but before the policy expiration date or the date upon which the  
13 insured replaces the policy or causes its cancellation, or in the case of  
14 insurance other than private passenger automobile insurance, covered  
15 claims against such insolvent insurer incurred] prior to or 90 days  
16 after the determination of insolvency, or before the policy expiration  
17 date if less than 90 days after said determination, or before the insured  
18 replaces the policy or causes its cancellation, if he does so within 90  
19 days of the determination, [but such] except that in the case of private  
20 passenger automobile insurance, the commissioner may, depending  
21 upon factors such as the level of that insurance written by the insolvent  
22 insurer, the volume of claims arising under that insurance, and  
23 conditions currently relating to the voluntary market for that insurance  
24 in this State, order the association to treat all or a portion of claims  
25 arising under that insurance as covered claims if they are incurred prior  
26 to or after the determination of insolvency, but before the policy  
27 expiration date or the date upon which the insured replaces the policy  
28 or causes its cancellation, and otherwise qualify as covered claims  
29 under the act. That obligation shall include only that amount of each  
30 covered claim which is less than \$300,000.00 per claimant and subject  
31 to any applicable deductible and self-insured retention contained in the  
32 policy, except that the \$300,000.00 limitation shall not apply to a  
33 covered claim arising out of insurance coverage mandated by section  
34 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under  
35 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the  
36 association shall be liable for payment of benefits in an amount not to  
37 exceed the amount set forth in section 4 of P.L.1972, c.70  
38 (C.39:6A-4). The commissioner may adjust or defer the association's  
39 obligations for covered claims based on the monies available to the  
40 association. In no event shall the association be obligated to a  
41 policyholder or claimant in an amount in excess of the limits of liability  
42 stated in the policy of the insolvent insurer from which the claim  
43 arises. Any obligation of the association to defend an insured shall  
44 cease upon the association's payment or tender of an amount equal to  
45 the lesser of the association's covered claim statutory limit or the  
46 applicable policy limit;

1 (2) Be deemed the insurer to the extent of its obligation on the  
2 covered claims and to such extent shall have all rights, duties, and  
3 obligations of the insolvent insurer as if the insurer had not become  
4 insolvent;

5 (3) Assess member insurers in amounts necessary to pay:

6 (a) The obligations of the association under paragraphs (1) and  
7 (11) of this subsection;

8 (b) The expenses of handling covered claims;

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

10 (d) Other expenses authorized by this act[, excluding expenses  
11 incurred by the association pursuant to paragraphs (9) and (10) of this  
12 subsection].

13 The assessments of each member insurer shall be in the proportion  
14 that the net direct written premiums of the member insurer for the  
15 calendar year preceding the assessment bears to the net direct written  
16 premiums of all member insurers for the calendar year preceding the  
17 assessment.

18 Each member insurer shall be notified of the assessment not later  
19 than 30 days before it is due. No member insurer of the association  
20 may be assessed pursuant to this paragraph (3) in any year in an  
21 amount greater than 2% of that member insurer's net direct written  
22 premiums for the calendar year preceding the assessment with regard  
23 to the association's obligation to pay covered claims and related  
24 expenses arising under coverages issued by insolvent insurers pursuant  
25 to P.L.1974, c.17 (C.17:30A-1 et seq.).

26 The association may, subject to the approval of the commissioner,  
27 exempt, abate or defer, in whole or in part, the assessment of any  
28 member insurer, if the assessment would cause the member insurer's  
29 financial statement to reflect amounts of capital or surplus less than  
30 the minimum amounts required for a certificate of authority by any  
31 jurisdiction in which the member insurer is authorized to transact  
32 insurance. In the event an assessment against a member insurer is  
33 exempted, abated, or deferred, in whole or in part, because of the  
34 limitations set forth in this section, the amount by which such  
35 assessment is exempted, abated, or deferred shall be assessed against  
36 the other member insurers in a manner consistent with the basis for  
37 assessments set forth in this section. If the maximum assessment,  
38 together with the other assets of the association, does not provide in  
39 any one year an amount sufficient to carry out the responsibilities of  
40 the association, the necessary additional funds shall be assessed as  
41 soon thereafter as it is permitted by this act. Each member insurer  
42 serving as a servicing facility may set off against any assessment,  
43 authorized payments made on covered claims and expenses incurred  
44 in the payment of such claims by such member insurer;

45 (4) Investigate claims brought against the association and adjust,  
46 compromise, settle, and pay covered claims to the extent of the

1 association's obligation and deny all other claims and may review  
2 settlements, releases and judgments to which the insolvent insurer or  
3 its insureds were parties to determine the extent to which such  
4 settlements, releases and judgments may be properly contested;

5 (5) Notify such persons as the commissioner directs under  
6 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17  
7 (C.17:30A-10);

8 (6) Handle claims through its employees or through one or more  
9 insurers or other persons designated as servicing facilities. Designation  
10 of a servicing facility is subject to the approval of the commissioner,  
11 but such designation may be declined by a member insurer. The  
12 association is designated as a servicing facility for the administration  
13 of claim obligations of: (a) the New Jersey Surplus Lines Insurance  
14 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance  
15 Association; and (c) the Unsatisfied Claim and Judgment Fund. The  
16 association may also be designated or may contract as a servicing  
17 facility for any other entity which may be recommended by the  
18 association's board of directors and approved by the commissioner;

19 (7) Reimburse each servicing facility for obligations of the  
20 association paid by the facility and for expenses incurred by the facility  
21 while handling claims on behalf of the association and shall pay the  
22 other expenses of the association authorized by this act;

23 (8) Make loans to the New Jersey Surplus Lines Insurance  
24 Guaranty Fund and the Unsatisfied Claim and Judgment Fund **[is] in**  
25 such amounts and on such terms as the board of directors may  
26 determine are necessary or appropriate to effectuate the purposes of  
27 P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance with the plan of  
28 operation; provided, however, no such loan transaction shall be  
29 authorized to the extent the federal tax exemption of the association  
30 would be withdrawn or the association would otherwise incur any  
31 federal tax or penalty as a result of such transaction;

32 (9) **[Assess member insurers in amounts necessary to make loans**  
33 pursuant to paragraph (10) of this subsection. The estimated  
34 assessments of each member insurer shall be in the proportion that the  
35 net direct written premiums of the member insurer for the calendar  
36 year preceding the assessment bears to the net direct written premiums  
37 of all member insurers for the calendar year preceding the assessment  
38 with actual assessments adjusted in the succeeding year based on the  
39 proportion that the assessed member insurer's net direct written  
40 premiums in the year of assessment bears to the net direct written  
41 premiums of all member insurers for that year.

42 (a) For the purposes of this paragraph, "net direct written  
43 premiums" shall not include medical malpractice liability insurance  
44 premiums paid to member insurers to which an additional charge has  
45 been applied for deposit in the New Jersey Medical Malpractice  
46 Reinsurance Recovery Fund as provided in the "Medical Malpractice

1 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the  
2 regulations promulgated pursuant thereto.

3 (b) In the event that the commissioner certifies that loans in  
4 amounts less than \$160 million per calendar year as provided in  
5 paragraph (10) of this subsection will satisfy the current and  
6 anticipated financial obligations of the Market Transition Facility,  
7 without reference to the amount of funds remaining from the sale of  
8 the Market Transition Facility Senior Lien Revenue Bonds, a member  
9 insurer, and all of its affiliates as defined in subsection a. of section 1  
10 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced  
11 assessment pursuant to this paragraph if the member insurer and all  
12 such affiliates: (i) did not issue or renew a policy of private passenger  
13 automobile insurance in this State on or after January 1, 1973; (ii)  
14 were not assessed as members of the Market Transition Facility as  
15 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had  
16 not relinquished voluntarily any expectation they may have had for the  
17 repayment of loans made pursuant to paragraph (10) of this  
18 subsection, as provided by paragraph (2) of subsection b. of section 6  
19 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or  
20 settlement agreement approved by any court of competent jurisdiction,  
21 on or before the effective date of this 1995 amendatory act. The  
22 reduced assessment of such members shall be equal to their  
23 proportionate share of the difference between the amount certified by  
24 the commissioner and the total of the assessment of all other insurers  
25 subject to such assessment. If the amount of such difference is zero  
26 or less, the reduced assessment shall be zero] (Deleted by amendment,  
27 P.L. \_\_, c. .)

28 (10) [Make loans in the amount of \$160 million per calendar year,  
29 beginning in calendar year 1990, or upon certification by the  
30 commissioner, as provided by paragraph (b) of subsection (9) of this  
31 section, that lesser amounts will satisfy the current and anticipated  
32 financial obligations of the Market Transition Facility, such lesser  
33 amounts as may be collected pursuant to paragraph (9) of this  
34 subsection, to the New Jersey Automobile Insurance Guaranty Fund  
35 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except  
36 that no loan shall be made pursuant to this paragraph after December  
37 31, 1997. In no event shall member insurers subject to assessments  
38 have their financial obligation increased due to reductions granted  
39 pursuant to paragraph (9) of this subsection] (Deleted by amendment,  
40 P.L. \_\_, c. .)

41 (11) Reimburse an insurer for medical expense benefits in excess  
42 of \$75,000 per person per accident as provided in section 2 of  
43 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an  
44 automobile insurance policy issued prior to January 1, 2004;

45 (12) Undertake all of the management, administrative, and claims  
46 activities of the Unsatisfied Claim and Judgment Fund, created

1 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey  
2 Automobile Full Insurance Underwriting Association, created pursuant  
3 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition  
4 Facility, created pursuant to section 88 of P.L.1990, c.8  
5 (C.17:33B-11).

6 b. The association may:

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

9 (2) Borrow and separately account for funds from any source,  
10 including, but not limited to, the New Jersey Surplus Lines Insurance  
11 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such  
12 amounts and on such terms, as the board of directors may determine  
13 are necessary or appropriate to effectuate the purpose of this act in  
14 accordance with the plan of operation; provided, however, no such  
15 borrowing transaction shall be authorized to the extent the federal tax  
16 exemption of the association would be withdrawn or the association  
17 would otherwise incur any federal tax or penalty as a result of such  
18 transaction;

19 (3) Sue or be sued;

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

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

24 (6) Refund to the member insurers in proportion of the  
25 contribution of each member insurer that amount by which the assets  
26 exceed the liabilities if, at the end of any calendar year, the board of  
27 directors finds that the assets of the association exceed the liabilities,  
28 as estimated by the board of directors for the coming year.

29 (cf: P.L.2003, c.89, s.4)

30

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

33 10. a. The commissioner shall:

34 (1) Notify the association of the existence of an insolvent insurer  
35 not later than 3 days after he receives notice of the determination of  
36 the insolvency. The association shall be entitled to a copy of any  
37 complaint seeking an order of liquidation with a finding of insolvency  
38 against a member insurer at the same time that such complaint is filed  
39 with a court of competent jurisdiction;

40 (2) Upon request of the board of directors, provide the association  
41 with a statement of the net direct written premiums of each member  
42 insurer.

43 b. The commissioner may:

44 (1) Require that the association notify the insureds of the insolvent  
45 insurer and any other interested parties of the determination of  
46 insolvency and of their rights under this act. Such notification [may

1 be by mail at their last known address, where available, but if  
2 sufficient information for notification by mail is not available, notice]  
3 shall be by publication in [a newspaper] newspapers of general  
4 circulation [shall be sufficient] as the commissioner shall direct;

5 (2) Suspend or revoke, after notice and hearing, the certificate or  
6 authority to transact insurance in this State of any member insurer  
7 which fails to pay an assessment when due or fails to comply with the  
8 plan of operation. As an alternative, the commissioner may levy a fine  
9 on any member insurer which fails to pay an assessment when due.  
10 Such fine shall not exceed 5% of the unpaid assessment per month,  
11 except that no fine shall be less than \$100.00 per month;

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

14 (cf: P.L.1979, c.448, s.5)

15  
16 6. Section 11 of P.L.1974, c.17 (C.17:30A-11) is amended to read  
17 as follows:

18 11. a. Any person recovering under this act shall be deemed to  
19 have assigned his rights under the policy to the association to the  
20 extent of his recovery from the association. Every insured or claimant  
21 seeking the protection of this act shall cooperate with the association  
22 to the same extent as such person would have been required to  
23 cooperate with the insolvent insurer. The association shall have no  
24 cause of action against the insured of the insolvent insurer for any  
25 sums it has paid out except such causes of action as the insolvent  
26 insurer would have had if such sums had been paid by the insolvent  
27 insurer. In the case of an insolvent insurer operating on a plan with an  
28 assessment liability, payments of claims of the association shall not  
29 operate to reduce the liability of insureds to the receiver, liquidator, or  
30 statutory successor for unpaid assessments;

31 b. The receiver, liquidator, or statutory successor of an insolvent  
32 insurer shall be bound by settlements of covered claims by the  
33 association or its representatives. The court having jurisdiction shall  
34 grant such claims priority equal to that which the claimant would have  
35 been entitled in the absence of this act against the assets of the  
36 insolvent insurer. The expenses of the association or similar  
37 organization in handling claims shall be accorded the same priority as  
38 the liquidator's expenses;

39 c. The association shall periodically file with the receiver or  
40 liquidator of the insolvent insurer statements of the covered claims  
41 paid by the association and estimates of anticipated claims on the  
42 association which shall preserve the rights of the association against  
43 the assets of the insolvent insurer;

44 d. The liquidator, receiver, or statutory successor of an insolvent  
45 insurer covered by this act shall permit access by the board or its  
46 representative to all of the insolvent insurer's records which would

1 assist the board in carrying out its functions under this act with regard  
2 to covered claims. In addition, the liquidator, receiver, or statutory  
3 successor shall provide the board or its representative with copies or  
4 permit it to make copies of such records upon the request of the  
5 board and at the expense of the board.

6 e. The association shall have the right to recover from the  
7 following persons the amount of any covered claim paid to or on  
8 behalf of that person pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.):

9 (1) An insured whose net worth on December 31 of the year  
10 immediately preceding the date the insurer becomes an insolvent  
11 insurer exceeds \$25 million and whose liability obligations to other  
12 persons are satisfied in whole or in part by payments made under  
13 P.L.1974, c.17 (C.17:30A et seq.; and

14 (2) Any person who is an affiliate of the insolvent insurer and  
15 whose liability obligations to other persons are satisfied in whole or in  
16 part by payments made under P.L.1974, c.17 (C.17:30A et seq.).

17 (cf: P.L.1979, c.448, s.6)

18

19 7. Section 12 of P.L.1974, c.17 (C.17:30A-12) is amended to read  
20 as follows:

21 12. a. Any person having a covered claim which may be recovered  
22 from more than one insurance guaranty association or its equivalent  
23 shall ~~seek recovery~~ be required to exhaust first ~~from~~ his rights  
24 under the statute governing the association of the place of residence  
25 of the insured at the time of the insured event except that if it is a first  
26 party claim for damage to property with a permanent location, he shall  
27 seek recovery first from the association of the location of the property.  
28 ~~[Any recovery under this act shall be reduced by the amount of~~  
29 ~~recovery from any other insurance guaranty association or its~~  
30 ~~equivalent. However, if] If recovery is denied or deferred by ~~[the]~~  
31 that association, a person may proceed to ~~[recover]~~ seek recovery  
32 from any other insurance guaranty association or its equivalent from  
33 which recovery may be legally sought.~~

34 b. Any person having a claim ~~[against an insurer, whether or not~~  
35 ~~the insurer is a member insurer, under any provision in] , except for~~  
36 a claim for coverage for personal injury protection benefits issued  
37 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section 4 of  
38 P.L.1998, c.21 (C.39:6A-3.1), under an insurance policy other than a  
39 policy of an insolvent insurer [which is also a covered claim], shall be  
40 required to exhaust first his right under that other policy. [An amount  
41 payable on a covered claim under P.L.1974, c.17 (C.17:30A-1 et seq.)  
42 shall be reduced by the amount of recovery under any such insurance  
43 policy.]

44 For purposes of this subsection b., a claim under an insurance  
45 policy shall include a claim under any kind of insurance, whether it is



1 a first-party or third-party claim, and shall include without limitation,  
2 general liability, accident and health insurance, workers'  
3 compensation, health benefits plan coverage, primary and excess  
4 coverage, if applicable, and all other private, group or governmental  
5 coverages except coverage for personal injury protection benefits  
6 issued pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and section  
7 4 of P.L.1998, c.21 (C.39:6A-3.1).

8 (cf: P.L.1996, c.156, s.2)

9  
10 8. Section 18 of P.L.1974, c.17 (C.17:30A-18) is amended to read  
11 as follows:

12 18. ~~Upon application and notice all~~ All proceedings in which the  
13 insolvent insurer is a party or is obligated to defend a party in any  
14 court in this State shall, subject to full or partial waiver by the  
15 association in specific cases involving covered claims, be stayed for  
16 120 days and such additional time thereafter as may be determined by  
17 the court from the date ~~the insolvency is determined~~ of the order of  
18 liquidation or any ancillary proceeding ~~is~~ is initiated in the State,  
19 whichever is later, to permit proper defense by the association of all  
20 pending causes of action. Public notice of the stay shall be by  
21 publication in three newspapers of general circulation in this State  
22 within 10 days of the order of liquidation. With respect to any  
23 covered claims arising from a judgment under any decision, verdict or  
24 finding based on the default of the insolvent insurer or its failure to  
25 defend an insured, the association either on its own behalf or on  
26 behalf of such insured may apply to have such judgment, order,  
27 decision, verdict or finding set aside by the court in which such  
28 judgment, order, decision, verdict or finding is entered and shall be  
29 permitted to defend against such claim on the merits.

30 (cf: P.L.1979, c.448, s.8)

31  
32 9. This act shall take effect immediately and shall apply to covered  
33 claims resulting from insolvencies occurring on or after that date.

#### 34 35 36 STATEMENT

37  
38 This bill makes various revisions to the "New Jersey Property-  
39 Liability Insurance Guaranty Association Act (the act)." In many  
40 cases, these revisions are designed to align the act more closely with  
41 the provisions of the National Association of Insurance Commissioner  
42 (NAIC) model act.

43 The purpose of the act, as amended by the bill, is to minimize  
44 financial loss to claimants or policyholders because of the insolvency  
45 of a property or casualty insurer. The bill adds certain new definitions  
46 to the act, including the term "affiliate," to recognize the evolution of

1 insurance company ownership. Definitions of "credit insurance" and  
2 "ocean marine reinsurance" are added as well. Several revisions are  
3 made to the definition of "covered claim" to clarify what types of  
4 claims are covered and the types of claims, damages and expenses  
5 which are not covered by the act. The most noteworthy change here,  
6 but one that is not part of the NAIC model act, however, is eliminating  
7 as a "covered claim" any first party claim by an insured whose net  
8 worth exceeds \$25 million on December 31 of the year prior to the  
9 year in which the insurer becomes insolvent. This change is intended  
10 to eliminate the more sophisticated insured from the pool of claimants,  
11 so as to discourage purchase of coverage by such insureds from  
12 insurers who may have "under-priced" a policy to gain market share  
13 at the risk of a resulting insolvency.

14 The bill makes an exception to the act's current provisions for  
15 covered claims of private passenger automobile insurance so that,  
16 depending upon factors such as the volume of that type of insurance  
17 by the insolvent insurer, the volume of claims and conditions in the  
18 voluntary automobile insurance market, the commissioner may order  
19 the New Jersey Property-Liability Insurance Guaranty Association to  
20 treat all or a portion of claims as covered claims, regardless of whether  
21 they are incurred before or after the determination of insolvency, but  
22 before the policy expires or is replaced or canceled by the insured.  
23 The commissioner is also given the discretion to adjust or defer the  
24 association's obligations for covered claims based on the monies  
25 available to the association.

26 The bill also eliminates the responsibility of the association to make  
27 loans to satisfy the financial obligations of the Market Transition  
28 Facility (MTF) and to assess the association's member insurers to  
29 underwrite those loans. The financial obligations of the MTF are  
30 currently in run off and remaining balances in the New Jersey  
31 Automobile Insurance Guaranty Fund are to be transferred to the  
32 General Fund pursuant to P.L.2003, c.89.

33 The bill eliminates the options of the association to notify insureds  
34 of insolvents insurers of their rights under the act by mail and instead  
35 makes publication in newspapers in general circulation the exclusive  
36 form of notification.

37 The bill authorizes the association to recover amounts paid on  
38 covered claim to or on behalf of: (1) an insured whose net worth on  
39 December 31 of the year immediately preceding the date of insolvency  
40 exceeds \$25 million; and (2) an affiliate of the insolvent insurer, if their  
41 liability obligations to other persons are satisfied in whole or in part by  
42 payments made by the association.

43 Other technical and conforming amendments are made to the act as  
44 well.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 2462 and 2873**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 23, 2004

The Assembly Financial Institutions and Insurance Committee reports favorably, an Assembly Committee Substitute for Assembly Bill Nos. 2462 and 2873.

This substitute bill makes various revisions to the "New Jersey Property-Liability Insurance Guaranty Association Act" (the act). In many cases, these revisions are designed to align the act more closely with the provisions of the National Association of Insurance Commissioners (NAIC) model act.

The purpose of the act, as amended by the bill, is to minimize financial loss to claimants or policyholders because of the insolvency of a property or casualty insurer. The bill adds certain new definitions to the act, including the term "affiliate," to recognize the evolution of insurance company ownership. Definitions of "credit insurance" and "ocean marine reinsurance" are added as well. Several revisions are made to the definition of "covered claim" to clarify what types of claims are covered and the types of claims, damages and expenses which are not covered by the act. Among those revisions, the bill eliminates as a "covered claim" any first party claim by an insured whose net worth exceeds \$25 million on December 31 of the year prior to the year in which the insurer becomes insolvent. This change is intended to eliminate the more sophisticated insured from the pool of claimants, so as to discourage purchase of coverage by such insureds from insurers who may have "under-priced" a policy to gain market share at the risk of a resulting insolvency.

The bill makes an exception to the act's current provisions for covered claims of private passenger automobile insurance so that, depending upon factors such as the volume of that type of insurance by the insolvent insurer, the volume of claims and conditions in the voluntary automobile insurance market, the commissioner may order the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to treat all or a portion of claims as covered claims, regardless of whether they are incurred before or after the determination of insolvency, but before the policy expires or is

replaced or canceled by the insured. The commissioner is also given the discretion to pay a portion of or defer the association's obligations for covered claims based on the monies available to the association.

The bill also eliminates the responsibility of the association to make loans to satisfy the financial obligations of the Market Transition Facility (MTF) and to assess the association's member insurers to underwrite those loans. The financial obligations of the MTF are currently in run off and the remaining balances in the New Jersey Automobile Insurance Guaranty Fund are transferred to PLIGA pursuant to P.L.2003, c.89.

The bill eliminates the option of the association to notify insureds of insolvent insurers of their rights under the act by mail and instead makes publication in newspapers in general circulation the exclusive form of notification.

The bill authorizes the association to recover amounts paid on covered claims to or on behalf of: (1) an insured whose net worth on December 31 of the year immediately preceding the date of insolvency exceeds \$25 million; and (2) an affiliate of the insolvent insurer, if their liability obligations to other persons are satisfied in whole or in part by payments made by the association.

This bill is identical to the Senate Committee Substitute for Senate Bill Nos. 702 and 1581, also favorably reported by the committee today.