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ASSEMBLY, No. 4168

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senators Sarlo, Sweeney and Madden

SYNOPSIS

Transfers management, administration and duties of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning "the workers' compensation security fund,"
2 amending and supplementing various parts of the statutory law,
3 and repealing R.S.34:15-109, R.S.34:15-110 and R.S.34:15-118.

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

7
8 1. (New section) The workers' compensation security fund
9 created pursuant to R.S. 34:15-105, along with all its functions,
10 powers and duties and all its assets, liabilities and balances, is
11 hereby transferred to the New Jersey Property-Liability Insurance
12 Guaranty Association, established pursuant to P.L.1974, c.17
13 (C.17:30A-1 et seq.).

14
15 2. R.S.34:15-105 is amended to read as follows:

16 34:15-105. There is hereby created a fund to be known as "the
17 workers' compensation security fund," for the purpose of assuring to
18 persons entitled thereto the compensation provided by this chapter,
19 R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers'
20 Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), or
21 both, for employments insured in insolvent carriers and for the
22 purpose of providing money for first year annual adjustments for
23 benefit payments and supplemental payments during fiscal years
24 1984 and 1985 provided for by P.L.1980, c.83 (C.34:15-95.4 et al.).
25 Such fund shall be applicable to the payment of valid claims for
26 compensation or death benefits arising from a standard, primary
27 workers' compensation policy heretofore or hereafter made
28 pursuant to this chapter or the federal "Longshore and Harbor
29 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et
30 seq.), and remaining unpaid, in whole or in part, by reason of the
31 default, after March 26, 1935, of an insolvent carrier. Expenses of
32 administration also shall be paid from the fund as herein provided.
33 Such fund shall consist of all contributions received and paid into
34 the fund by carriers, as herein defined, all property and securities
35 acquired by and through the use of moneys belonging to the fund,
36 and of interest earned upon moneys deposited or invested as herein
37 provided. The fund shall be administered by the **【Commissioner of**
38 **Banking and Insurance】** New Jersey Property-Liability Guaranty
39 Association in accordance with the provisions of this chapter.

40 Compensation pursuant to the federal "Longshore and Harbor
41 Workers' Compensation Act," 44 Stat. 1424 (33U.S.C. s.901 et
42 seq.), shall be payable under this article only with respect to
43 coverage or risks located or resident in this State. The insolvency,
44 bankruptcy, or dissolution of the insured shall effect a termination
45 of compensation provided under this article for claims arising under

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 the federal "Longshore and Harbor Workers' Compensation Act,"
2 44 Stat. 1424 (33U.S.C. s.901 et seq.).
3 (cf: P.L.2004, c.179, s.2)

4
5 3. R.S.34:15-106 is amended to read as follows:

6 34:15-106. Every carrier shall [, on or before September 1,
7 1935,] annually file with the [State Treasurer and with the]
8 Commissioner of Banking and Insurance [identical] returns, under
9 oath, on a form to be prescribed and furnished by the commissioner,
10 stating the amount of net written premiums [for the six months'
11 period ending June 30, 1935,] on policies issued, renewed or
12 extended by such carrier, to insure payment of compensation
13 pursuant to this chapter or the federal "Longshore and Harbor
14 Workers' Compensation Act," 44 Stat. 1424 (33U.S.C. s.901 et
15 seq.), as authorized by this article. For the purposes of this article
16 "net written premiums" shall mean gross written premiums less
17 return premiums on policies returned not taken, and on policies
18 canceled. [Thereafter, on or before the first day of March and
19 September of each year, each such carrier shall file similar identical
20 returns, stating the amount of such net written premiums for the six
21 months' period ending, respectively, on the preceding December
22 31st and June 30th, on policies issued, renewed or extended by such
23 carrier.]

24 (cf: P.L.2004, c.179, s.3)

25

26 4. R.S.34:15-107 is amended to read as follows:

27 34:15-107. For the privilege of carrying on the business of
28 workers' compensation insurance in this State, every carrier shall
29 pay into the fund [on the first day of September, nineteen hundred
30 thirty-five,] a sum equal to one per cent of its net written premiums
31 as shown by the return hereinbefore prescribed for the period
32 [ending June thirtieth, one thousand nine hundred and thirty-five,
33 and thereafter each carrier, upon filing each semiannual return, shall
34 pay a sum equal to one percent of its net written premiums for the
35 period] covered by such return.

36 (cf: P.L.2004, c.179, s.4)

37

38 5. R.S.34:15-111 is amended to read as follows:

39 34:15-111. A valid claim for compensation or death benefits, or
40 installments thereof, heretofore or hereafter made pursuant to this
41 chapter or the federal "Longshore and Harbor Workers'
42 Compensation Act," 44 Stat. 1424 (33U.S.C. s.901 et seq.), as
43 authorized by this article, which has remained or shall remain due
44 and unpaid for 60 days, by reason of default by an insolvent carrier,
45 shall be paid from the fund in the manner provided in this section.
46 Any person in interest may file with the [Commissioner of Banking
47 and Insurance] New Jersey Property-Liability Insurance Guaranty

1 Association an application for payment of compensation or death
2 benefits from the fund on a form to be prescribed and furnished by
3 the [commissioner] New Jersey Property-Liability Insurance
4 Guaranty Association. If there has been an award, final or
5 otherwise, a certified copy thereof shall accompany the application.
6 [Such commissioner shall thereupon certify to the State Treasurer
7 such award for payment according to the terms of the same,
8 whereupon payment shall be made by the State Treasurer:]

9 Any person recovering under R.S.34:15-103 et seq. shall be
10 deemed to have assigned his rights under the policy to the fund to
11 the extent of his recovery from the fund. Every insured or claimant
12 seeking the protection of R.S.34:15-103 et seq. shall cooperate with
13 the fund to the same extent as that person would have been required
14 to cooperate with the insolvent carrier. The fund shall have no
15 cause of action against the insured employer or the insolvent carrier
16 for any sums it has paid out, except those causes of action that the
17 insolvent carrier would have had if those sums had been paid by the
18 insolvent carrier, including, but not limited to, the right to receive
19 the benefit of, and to enforce any and all obligations on the part of
20 the insured, to either fund directly (or indirectly through a third
21 party administrator), or secure the payment of, compensation due
22 under the policies of the insolvent carrier, to the extent of claims
23 paid. The foregoing vests the fund with an exclusive cause of
24 action against the insured and includes the right to enforce against
25 the insured the rights of the carrier with respect to any obligation of
26 the insured to reimburse the carrier for deductibles or pay claims
27 within a deductible. Further, the fund is vested with a first lien in
28 any collateral provided by the insured to the carrier to secure the
29 insured's performance, to the extent of claims paid by the fund,
30 which lien can be perfected by notice to the liquidator. In the case
31 of an insolvent insurer operating on a plan with an assessment
32 liability, payments of claims of the fund shall not operate to reduce
33 the liability of insureds to the receiver, liquidator or statutory
34 successor for unpaid assessments.

35 The receiver, liquidator, or statutory successor of an insolvent
36 insurer shall be bound by settlements of covered claims by the fund
37 or its representatives. The court having jurisdiction shall grant a
38 claim priority equal to that to which the claimant would have been
39 entitled in the absence of R.S.34:15-103 et seq. against the assets of
40 the insolvent carrier. The expenses of the fund or similar
41 organization in handling claims shall be accorded the same priority
42 as the liquidator's expenses.

43 Except as otherwise provided in this section, an employer may
44 pay such award or part thereof in advance of payment from the fund
45 and shall thereupon be subrogated to the rights of the employee or
46 other party in interest against the fund to the extent of the amount
47 so paid.

1 The **[State Treasurer as custodian of the fund]** New Jersey
2 Property-Liability Insurance Guaranty Association shall be entitled
3 to recover the sum of all liabilities of such insolvent carrier
4 assumed by such fund from such carrier, its receiver, liquidator,
5 rehabilitator or trustee in bankruptcy and may prosecute an action
6 or other proceedings therefor. All moneys recovered in any such
7 action or proceedings shall forthwith be placed to the credit of the
8 fund **[by the State Treasurer]** to reimburse the fund to the extent of
9 the moneys so recovered and paid.

10 (cf: P.L.2004, c.179, s.8)

11
12 6. Section 2 of P.L.1974, c.174 (C.17:30A-2) is amended to
13 read as follows:

14 2. a. The purpose of this act is to provide a mechanism for the
15 payment of covered claims under certain insurance policies, to
16 avoid excessive delay in payment, to minimize financial loss to
17 claimants or policyholders because of the insolvency of an insurer,
18 to assist in the detection and prevention of insurer insolvencies, to
19 provide an association to assess the cost of such protection among
20 insurers, and to provide a mechanism to run off, manage, administer
21 and pay claims asserted against the Unsatisfied Claim and Judgment
22 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the
23 New Jersey Automobile Full Insurance Underwriting Association,
24 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), **[and]** the
25 Market Transition Facility, created pursuant to section 88 of
26 P.L.1990, c.8 (C.17:33B-11), and "the workers' compensation
27 security fund," created pursuant to R.S.34:15-105.

28 b. This act shall apply to all kinds of direct insurance, except
29 life insurance, accident and health insurance, workers'
30 compensation insurance, except as provided by P.L. , c. (C.)
31 (pending before the Legislature as this bill), title insurance,
32 annuities, surety bonds, credit insurance, mortgage guaranty
33 insurance, municipal bond coverage, fidelity insurance, investment
34 return assurance, ocean marine insurance and pet health insurance.

35 (cf: P.L.2004, c.175, s.1)

36
37 7. (New section) The Legislature finds and declares that:

38 a. It is in the public interest to authorize the transfer and
39 consolidation of compatible operations of "the workers'
40 compensation security fund" to the New Jersey Property-Liability
41 Insurance Guaranty Association.

42 b. Following the transfer to the New Jersey Property-Liability
43 Insurance Guaranty Association of its respective management,
44 administrative and claim functions, "the workers' compensation
45 security fund" shall continue to exist as a separate legal entity
46 subject to the provisions of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

1 c. The New Jersey Property-Liability Insurance Guaranty
2 Association will administer the obligations of the "the workers'
3 compensation security fund" pursuant to R.S.34:15-105 et seq., and
4 take over all governance, administrative and financial functions of
5 "the workers' compensation security fund," including the claim
6 payment function.

7 d. The New Jersey Property-Liability Insurance Guaranty
8 Association is formally designated as the servicing facility for
9 several statutory entities for which it currently provides
10 administrative services and also for "the workers' compensation
11 security fund."
12

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

15 6. There is created a private, nonprofit, unincorporated, legal
16 entity to be known as the New Jersey Property-Liability Insurance
17 Guaranty Association. All insurers defined as member insurers in
18 section 5 shall be and remain members of the association as a
19 condition of their authority to transact insurance in this State. The
20 association shall perform its functions under a plan of operation
21 established and approved under section 9 and shall exercise its
22 powers through a board of directors established under section 7.

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

29 The association is also authorized and shall have all of the
30 powers necessary and appropriate for the management and
31 administration of the affairs of, and the payment of valid claims
32 asserted against: the Unsatisfied Claim and Judgment Fund, created
33 pursuant to the provisions of P.L.1952, c.174 (C.39:6-61 et seq.);
34 the New Jersey Automobile Full Insurance Underwriting
35 Association, created pursuant to the provisions of P.L.1983, c.65
36 (C.17:30E-1 et seq.); **[and]** the Market Transition Facility created
37 pursuant to the provisions of section 88 of P.L.1990, c.8 (C.17:33B-
38 11); and "the workers' compensation security fund" created pursuant
39 to R.S.34:15-105.

40 (cf: P.L.2004, c.175, s.3)
41

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

44 8. a. The association shall:

45 (1) Be obligated to the extent of the covered claims against an
46 insolvent insurer incurred prior to or 90 days after the determination
47 of insolvency, or before the policy expiration date if less than 90
48 days after said determination, or before the insured replaces the

1 policy or causes its cancellation, if he does so within 90 days of the
2 determination, except that in the case of private passenger
3 automobile insurance, the commissioner may, depending upon
4 factors such as the level of that insurance written by the insolvent
5 insurer, the volume of claims arising under that insurance, and
6 conditions currently relating to the voluntary market for that
7 insurance in this State, order the association to treat all or a portion
8 of claims arising under that insurance as covered claims if they are
9 incurred prior to or after the determination of insolvency, but before
10 the policy expiration date or the date upon which the insured
11 replaces the policy or causes its cancellation, and otherwise qualify
12 as covered claims under the act. That obligation shall include only
13 that amount of each covered claim which is less than \$300,000.00
14 per claimant and subject to any applicable deductible and self-
15 insured retention contained in the policy, except that the
16 \$300,000.00 limitation shall not apply to a covered claim arising
17 out of insurance coverage mandated by section 4 of P.L.1972, c.70
18 (C.39:6A-4), or to a valid claim for compensation or death benefits
19 arising out of workers' compensation insurance coverage under
20 R.S.34:15-1 et seq. or under the federal "Longshore and Harbor
21 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et
22 seq.). In the case of benefits payable under subsection a. of section
23 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for
24 payment of benefits in an amount not to exceed the amount set forth
25 in section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of workers'
26 compensation claims, the association shall administer the payment
27 of valid claims with respect to the injury or death of workers under
28 R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers'
29 Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), arising
30 from insurance coverage of risks located or resident in this State, as
31 provided in R.S.34:15-105 and secured through a standard, primary
32 workers' compensation policy. The commissioner may pay a
33 portion of or defer the association's obligations for covered claims
34 based on the monies available to the association. In no event shall
35 the association be obligated to a policyholder or claimant in an
36 amount in excess of the limits of liability stated in the policy of the
37 insolvent insurer from which the claim arises. Any obligation of
38 the association to defend an insured shall cease upon the
39 association's payment or tender of an amount equal to the lesser of
40 the association's covered claim statutory limit or the applicable
41 policy limit;

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

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

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

- 1 (b) The expenses of handling covered claims;
- 2 (c) The cost of examinations under section 13; and
- 3 (d) Other expenses authorized by this act.

4 The assessments of each member insurer shall be in the
5 proportion that the net direct written premiums of the member
6 insurer for the calendar year preceding the assessment bears to the
7 net direct written premiums of all member insurers for the calendar
8 year preceding the assessment.

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

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

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

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

46 (6) Handle claims through its employees or through one or more
47 insurers or other persons designated as servicing facilities.
48 Designation of a servicing facility is subject to the approval of the

1 commissioner, but such designation may be declined by a member
2 insurer. The association is designated as a servicing facility for the
3 administration of claim obligations of: (a) the New Jersey Surplus
4 Lines Insurance Guaranty Fund; (b) the New Jersey Medical
5 Malpractice Reinsurance Association; **[and]** (c) the Unsatisfied
6 Claim and Judgment Fund; and (d) "the workers' compensation
7 security fund." The association may also be designated or may
8 contract as a servicing facility for any other entity which may be
9 recommended by the association's board of directors and approved
10 by the commissioner;

11 (7) Reimburse each servicing facility for obligations of the
12 association paid by the facility and for expenses incurred by the
13 facility while handling claims on behalf of the association and shall
14 pay the other expenses of the association authorized by this act;

15 (8) Make loans to the New Jersey Surplus Lines Insurance
16 Guaranty Fund **[and]**, the Unsatisfied Claim and Judgment Fund,
17 and "the workers' compensation security fund" in such amounts and
18 on such terms as the board of directors may determine are necessary
19 or appropriate to effectuate the purposes of **[P.L.2003, c.89**
20 **(C.17:30A-2.1 et al.)]** P.L.1974, c.17 (C.17:30A-1 et seq.),
21 P.L.1984, c.101 (C.17:22-6.70 et seq.), P.L.1952, c.174 (C.39:6-61
22 et seq.) and R.S.34:15-103 et seq. in accordance with the plan of
23 operation; provided, however, no such loan transaction shall be
24 authorized to the extent the federal tax exemption of the association
25 or any entity for which it serves as administrator would be
26 withdrawn or the association or any such serviced entity would
27 otherwise incur any federal tax or penalty as a result of such
28 transaction;

29 (9) (Deleted by amendment, P.L.2004, c.175.)

30 (10) (Deleted by amendment, P.L.2004, c.175.)

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

35 (12) Undertake all of the management, administrative, and
36 claims activities of the Unsatisfied Claim and Judgment Fund,
37 created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New
38 Jersey Automobile Full Insurance Underwriting Association,
39 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), **[and]** the
40 Market Transition Facility, created pursuant to section 88 of
41 P.L.1990, c.8 (C.17:33B-11) and "the workers' compensation
42 security fund," created pursuant to R.S.34:15-105.

43 b. The association may:

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

46 (2) Borrow and separately account for funds from any source,
47 including, but not limited to, the New Jersey Surplus Lines

1 Insurance Guaranty Fund **[and]**, the Unsatisfied Claim and
2 Judgment Fund, and "the workers' compensation security fund," in
3 such amounts and on such terms, as the board of directors may
4 determine are necessary or appropriate to effectuate the purpose of
5 this act in accordance with the plan of operation; provided,
6 however, no such borrowing transaction shall be authorized to the
7 extent the federal tax exemption of the association or any entity for
8 which it serves as administrator would be withdrawn or the
9 association or any such serviced entity would otherwise incur any
10 federal tax or penalty as a result of such transaction;

11 (3) Sue or be sued;

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

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

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

22 (cf: P.L.2004, c.175, s.4)

23

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

26 9. a. (1) The association shall submit to the commissioner a plan
27 of operation and any amendments thereto necessary or suitable to
28 assure the fair, reasonable, and equitable administration of the
29 association. The plan of operation and any amendments thereto
30 shall become effective upon approval in writing by the
31 commissioner;

32 (2) If the association fails to submit a plan of operation
33 acceptable to the commissioner within 90 days following the
34 effective date of this act, or if at any time thereafter the association
35 fails to submit an acceptable amendment to the plan, the
36 commissioner shall, after notice and hearing adopt and promulgate
37 such reasonable rules as are necessary or advisable to effectuate the
38 provisions of this act. Such rules shall continue in force until
39 modified by the commissioner or superseded by a plan submitted by
40 the association and approved by the commissioner.

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

42 c. The plan of operation shall:

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

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

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

- 1 (4) Establish procedures by which claims may be filed with the
2 association and establish acceptable forms of proof of covered
3 claims. Notice of claims to the receiver or liquidator of the
4 insolvent insurer shall be deemed notice to the association or its
5 agent and a list of such claims shall be periodically submitted to the
6 association by the receiver or liquidator;
- 7 (5) Establish regular places and times for meetings of the board
8 of directors;
- 9 (6) Establish procedures for records to be kept in all financial
10 transactions of the association, its agents, and the board of
11 directors;
- 12 (7) Provide that any member insurer aggrieved by any final
13 action or decision of the association may appeal to the
14 commissioner within 30 days after the action or decision;
- 15 (8) Establish the procedures whereby selections for the board of
16 directors will be submitted to the commissioner;
- 17 (9) Contain additional provisions necessary or proper for the
18 execution of the powers and duties of the association;
- 19 (10) Establish procedures for the transition and consolidation of
20 compatible functions of the Unsatisfied Claim and Judgment Fund,
21 the New Jersey Automobile Full Insurance Underwriting
22 Association **[and]** the Market Transition Facility, and "the workers'
23 compensation security fund" in order to eliminate redundant
24 operational activities and promote greater efficiencies in claims
25 handling and other operations;
- 26 (11) Establish procedures as necessary or proper to finance the
27 operation of and account for receipts and disbursements as well as
28 other financial transactions involving the Unsatisfied Claim and
29 Judgment Fund, the New Jersey Automobile Full Insurance
30 Underwriting Association **[and]** , the Market Transition Facility,
31 and "the workers' compensation security fund";
- 32 (12) Create such advisory boards as necessary or proper to assist
33 in the administration and management of the operations of the
34 Unsatisfied Claim and Judgment Fund.
- 35 d. The plan of operation may provide that any or all powers
36 and duties of the association except those under sections 8a.(3) and
37 8b.(2), are delegated to a corporation, association, or other
38 organization which performs or will perform functions similar to
39 those of this association, or its equivalent. Such a corporation,
40 association or organization shall be reimbursed as a servicing
41 facility would be reimbursed and shall be paid for its performance
42 of the functions of the association. A delegation under this
43 subsection shall take effect only with the approval of both the board
44 of directors and the commissioner, and may be made only to a
45 corporation, association, or organization which extends protection
46 not substantially less favorable and effective than that provided by
47 this act.
- 48 (cf: P.L.2003, c.89, s.5)

1 11. R.S.34:15-109, R.S.34:15-110, and R.S.34:15-118 through
2 34:15-120 are repealed.

3

4 12. This act shall take effect on July 1, 2009.

5

6

7

STATEMENT

8

9 This bill retains "the workers' compensation security fund" as a
10 separate legal entity, but transfers its management, administration
11 and claims activities to the New Jersey Property-Liability Insurance
12 Guaranty Association (PLIGA). PLIGA already performs similar
13 functions for the Unsatisfied Claim and Judgment Fund (UCJF) as
14 well as the former residual market mechanisms for automobile
15 insurance (the JUA and MTF). The acquired expertise and
16 experience of PLIGA in administering these functions for such
17 other entities invites this consolidation, which is expected to
18 achieve administrative and operational efficiencies in handling
19 claims asserted against certain insolvent insurers that write workers'
20 compensation insurance in the State.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4168

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 4168.

This bill retains "the workers' compensation security fund" as a separate legal entity, but transfers its management, administration and claims activities to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA). PLIGA already performs similar functions for the Unsatisfied Claim and Judgment Fund (UCJF) as well as the former residual market mechanisms for automobile insurance (the JUA and MTF). The acquired expertise and experience of PLIGA in administering these functions for such other entities invites this consolidation, which is expected to achieve administrative and operational efficiencies in handling claims asserted against certain insolvent insurers that write workers' compensation insurance in the State.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4168
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JANUARY 7, 2010

SUMMARY

- Synopsis:** Transfers management, administration and duties of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.
- Type of Impact:** A revenue and expenditure decrease for the Workers' Compensation Security Fund.
- Agencies Affected:** Department of Banking and Insurance; New Jersey Property-Liability Insurance Guaranty Association.

Office of Legislative Services Estimate

Fiscal Impact	FY2010	<u>FY 2011</u>	<u>FY 2012</u>
State Cost	(\$25 million)	(\$25 million)	(\$25 million)
State Revenue	(\$21.8 million)	(\$19 million)	(\$19 million)

- This bill transfers the management, administration and claims activities of the Workers' Compensation Security Fund (WCSF), created pursuant to R.S.34:15-105, from the Department of Banking and Insurance to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA). Since the State will not be directly responsible for collecting assessments for, or disbursing benefits from, the WCSF, the revenue and expenditures will no longer be State revenue or expenditures.
- The Office of Legislative Services estimates that this bill will result in the loss of an estimated \$21.8 million in FY 2010, and \$19 million in both FY 2011 and FY 2012, in State revenue annually. Additionally, the bill will result in a State expenditure decrease of an estimated \$25 million annually.
- The balance in the WCSF is estimated to be approximately \$20.9 million at the end of Fiscal Year 2010. This balance will also be transferred to PLIGA.

BILL DESCRIPTION

Assembly Bill No. 4168 of 2009 retains "the workers' compensation security fund" as a separate legal entity, but transfers its management, administration and claims activities to the

PLIGA. The PLIGA already performs similar functions for the Unsatisfied Claim and Judgment Fund (UCJF) as well as the former residual market mechanisms for automobile insurance (the JUA and MTF). The acquired expertise and experience of PLIGA in administering these functions for such other entities invites this consolidation, which is expected to achieve administrative and operational efficiencies in handling claims asserted against certain insolvent insurers that write workers' compensation insurance in the State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

This bill transfers the management, administration and claims activities of the Workers' Compensation Security Fund (WCSF), created pursuant to R.S.34:15-105, from the Department of Banking and Insurance to the PLIGA. Since the State will not be directly responsible for collecting assessments for, or disbursing benefits from, the WCSF, the revenue and expenditures will no longer be State revenue or expenditures.

The Office of Legislative Services estimates that this bill will result in the loss of an estimated \$21.8 million in FY 2010, and \$19 million in both FY 2011 and FY 2012, in State revenue annually. Additionally, the bill will result in a State expenditure decrease of an estimated \$25 million annually.

The balance in the WCSF is estimated to be approximately \$20.9 million at the end of Fiscal Year 2010. This balance will also be transferred to PLIGA.

Section: Commerce, Labor and Industry

*Analyst: Robin C. Ford
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2865

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 21, 2009

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senator Madden

SYNOPSIS

Transfers management, administration and duties of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/19/2009)

1 AN ACT concerning "the workers' compensation security fund,"
2 amending and supplementing various parts of the statutory law,
3 and repealing R.S.34:15-109, R.S.34:15-110 and R.S.34:15-118.

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

7
8 1. (New section) The workers' compensation security fund
9 created pursuant to R.S. 34:15-105, along with all its functions,
10 powers and duties and all its assets, liabilities and balances, is
11 hereby transferred to the New Jersey Property-Liability Insurance
12 Guaranty Association, established pursuant to P.L.1974, c.17
13 (C.17:30A-1 et seq.).

14
15 2. R.S.34:15-105 is amended to read as follows:

16 34:15-105. There is hereby created a fund to be known as "the
17 workers' compensation security fund," for the purpose of assuring to
18 persons entitled thereto the compensation provided by this chapter,
19 R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers'
20 Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), or
21 both, for employments insured in insolvent carriers and for the
22 purpose of providing money for first year annual adjustments for
23 benefit payments and supplemental payments during fiscal years
24 1984 and 1985 provided for by P.L.1980, c.83 (C.34:15-95.4 et al.).
25 Such fund shall be applicable to the payment of valid claims for
26 compensation or death benefits arising from a standard, primary
27 workers' compensation policy heretofore or hereafter made
28 pursuant to this chapter or the federal "Longshore and Harbor
29 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et
30 seq.), and remaining unpaid, in whole or in part, by reason of the
31 default, after March 26, 1935, of an insolvent carrier. Expenses of
32 administration also shall be paid from the fund as herein provided.
33 Such fund shall consist of all contributions received and paid into
34 the fund by carriers, as herein defined, all property and securities
35 acquired by and through the use of moneys belonging to the fund,
36 and of interest earned upon moneys deposited or invested as herein
37 provided. The fund shall be administered by the **【Commissioner of**
38 **Banking and Insurance】** New Jersey Property-Liability Guaranty
39 Association in accordance with the provisions of this chapter.

40 Compensation pursuant to the federal "Longshore and Harbor
41 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et
42 seq.), shall be payable under this article only with respect to
43 coverage or risks located or resident in this State. The insolvency,
44 bankruptcy, or dissolution of the insured shall effect a termination
45 of compensation provided under this article for claims arising under

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 the federal "Longshore and Harbor Workers' Compensation Act,"
2 44 Stat. 1424 (33 U.S.C. s.901 et seq.).
3 (cf: P.L.2004, c.179, s.2)

4
5 3. R.S.34:15-106 is amended to read as follows:

6 34:15-106. Every carrier shall [, on or before September 1,
7 1935,] annually file with the [State Treasurer and with the]
8 Commissioner of Banking and Insurance [identical] returns, under
9 oath, on a form to be prescribed and furnished by the commissioner,
10 stating the amount of net written premiums [for the six months'
11 period ending June 30, 1935,] on policies issued, renewed or
12 extended by such carrier, to insure payment of compensation
13 pursuant to this chapter or the federal "Longshore and Harbor
14 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et
15 seq.), as authorized by this article. For the purposes of this article
16 "net written premiums" shall mean gross written premiums less
17 return premiums on policies returned not taken, and on policies
18 canceled. [Thereafter, on or before the first day of March and
19 September of each year, each such carrier shall file similar identical
20 returns, stating the amount of such net written premiums for the six
21 months' period ending, respectively, on the preceding December
22 31st and June 30th, on policies issued, renewed or extended by such
23 carrier.]

24 (cf: P.L.2004, c.179, s.3)

25
26 4. R.S.34:15-107 is amended to read as follows:

27 34:15-107. For the privilege of carrying on the business of
28 workers' compensation insurance in this State, every carrier shall
29 pay into the fund [on the first day of September, nineteen hundred
30 thirty-five,] a sum equal to one per cent of its net written premiums
31 as shown by the return hereinbefore prescribed for the period
32 [ending June thirtieth, one thousand nine hundred and thirty-five,
33 and thereafter each carrier, upon filing each semiannual return, shall
34 pay a sum equal to one percent of its net written premiums for the
35 period] covered by such return.

36 (cf: P.L.2004, c.179, s.4)

37
38 5. R.S.34:15-111 is amended to read as follows:

39 34:15-111. A valid claim for compensation or death benefits, or
40 installments thereof, heretofore or hereafter made pursuant to this
41 chapter or the federal "Longshore and Harbor Workers'
42 Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as
43 authorized by this article, which has remained or shall remain due
44 and unpaid for 60 days, by reason of default by an insolvent carrier,
45 shall be paid from the fund in the manner provided in this section.
46 Any person in interest may file with the [Commissioner of Banking
47 and Insurance] New Jersey Property-Liability Insurance Guaranty

1 Association an application for payment of compensation or death
2 benefits from the fund on a form to be prescribed and furnished by
3 the [commissioner] New Jersey Property-Liability Insurance
4 Guaranty Association. If there has been an award, final or
5 otherwise, a certified copy thereof shall accompany the application.
6 [Such commissioner shall thereupon certify to the State Treasurer
7 such award for payment according to the terms of the same,
8 whereupon payment shall be made by the State Treasurer:]

9 Any person recovering under R.S.34:15-103 et seq. shall be
10 deemed to have assigned his rights under the policy to the fund to
11 the extent of his recovery from the fund. Every insured or claimant
12 seeking the protection of R.S.34:15-103 et seq. shall cooperate with
13 the fund to the same extent as that person would have been required
14 to cooperate with the insolvent carrier. The fund shall have no
15 cause of action against the insured employer or the insolvent carrier
16 for any sums it has paid out, except those causes of action that the
17 insolvent carrier would have had if those sums had been paid by the
18 insolvent carrier, including, but not limited to, the right to receive
19 the benefit of, and to enforce any and all obligations on the part of
20 the insured, to either fund directly (or indirectly through a third
21 party administrator), or secure the payment of, compensation due
22 under the policies of the insolvent carrier, to the extent of claims
23 paid. The foregoing vests the fund with an exclusive cause of
24 action against the insured and includes the right to enforce against
25 the insured the rights of the carrier with respect to any obligation of
26 the insured to reimburse the carrier for deductibles or pay claims
27 within a deductible. Further, the fund is vested with a first lien in
28 any collateral provided by the insured to the carrier to secure the
29 insured's performance, to the extent of claims paid by the fund,
30 which lien can be perfected by notice to the liquidator. In the case
31 of an insolvent insurer operating on a plan with an assessment
32 liability, payments of claims of the fund shall not operate to reduce
33 the liability of insureds to the receiver, liquidator or statutory
34 successor for unpaid assessments.

35 The receiver, liquidator, or statutory successor of an insolvent
36 insurer shall be bound by settlements of covered claims by the fund
37 or its representatives. The court having jurisdiction shall grant a
38 claim priority equal to that to which the claimant would have been
39 entitled in the absence of R.S.34:15-103 et seq. against the assets of
40 the insolvent carrier. The expenses of the fund or similar
41 organization in handling claims shall be accorded the same priority
42 as the liquidator's expenses.

43 Except as otherwise provided in this section, an employer may
44 pay such award or part thereof in advance of payment from the fund
45 and shall thereupon be subrogated to the rights of the employee or
46 other party in interest against the fund to the extent of the amount
47 so paid.

1 The **[State Treasurer as custodian of the fund]** New Jersey
2 Property-Liability Insurance Guaranty Association shall be entitled
3 to recover the sum of all liabilities of such insolvent carrier
4 assumed by such fund from such carrier, its receiver, liquidator,
5 rehabilitator or trustee in bankruptcy and may prosecute an action
6 or other proceedings therefor. All moneys recovered in any such
7 action or proceedings shall forthwith be placed to the credit of the
8 fund **[by the State Treasurer]** to reimburse the fund to the extent of
9 the moneys so recovered and paid.

10 (cf: P.L.2004, c.179, s.8)

11
12 6. Section 2 of P.L.1974, c.174 (C.17:30A-2) is amended to
13 read as follows:

14 2. a. The purpose of this act is to provide a mechanism for the
15 payment of covered claims under certain insurance policies, to
16 avoid excessive delay in payment, to minimize financial loss to
17 claimants or policyholders because of the insolvency of an insurer,
18 to assist in the detection and prevention of insurer insolvencies, to
19 provide an association to assess the cost of such protection among
20 insurers, and to provide a mechanism to run off, manage, administer
21 and pay claims asserted against the Unsatisfied Claim and Judgment
22 Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the
23 New Jersey Automobile Full Insurance Underwriting Association,
24 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), **[and]** the
25 Market Transition Facility, created pursuant to section 88 of
26 P.L.1990, c.8 (C.17:33B-11), and "the workers' compensation
27 security fund," created pursuant to R.S.34:15-105.

28 b. This act shall apply to all kinds of direct insurance, except
29 life insurance, accident and health insurance, workers'
30 compensation insurance, except as provided by P.L. , c. (C.)
31 (pending before the Legislature as this bill), title insurance,
32 annuities, surety bonds, credit insurance, mortgage guaranty
33 insurance, municipal bond coverage, fidelity insurance, investment
34 return assurance, ocean marine insurance and pet health insurance.

35 (cf: P.L.2004, c.175, s.1)

36
37 7. (New section) The Legislature finds and declares that:

38 a. It is in the public interest to authorize the transfer and
39 consolidation of compatible operations of "the workers'
40 compensation security fund" to the New Jersey Property-Liability
41 Insurance Guaranty Association.

42 b. Following the transfer to the New Jersey Property-Liability
43 Insurance Guaranty Association of its respective management,
44 administrative and claim functions, "the workers' compensation
45 security fund" shall continue to exist as a separate legal entity
46 subject to the provisions of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

1 c. The New Jersey Property-Liability Insurance Guaranty
2 Association will administer the obligations of the "the workers'
3 compensation security fund" pursuant to R.S.34:15-105 et seq., and
4 take over all governance, administrative and financial functions of
5 "the workers' compensation security fund," including the claim
6 payment function.

7 d. The New Jersey Property-Liability Insurance Guaranty
8 Association is formally designated as the servicing facility for
9 several statutory entities for which it currently provides
10 administrative services and also for "the workers' compensation
11 security fund."
12

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

15 6. There is created a private, nonprofit, unincorporated, legal
16 entity to be known as the New Jersey Property-Liability Insurance
17 Guaranty Association. All insurers defined as member insurers in
18 section 5 shall be and remain members of the association as a
19 condition of their authority to transact insurance in this State. The
20 association shall perform its functions under a plan of operation
21 established and approved under section 9 and shall exercise its
22 powers through a board of directors established under section 7.

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

29 The association is also authorized and shall have all of the
30 powers necessary and appropriate for the management and
31 administration of the affairs of, and the payment of valid claims
32 asserted against: the Unsatisfied Claim and Judgment Fund, created
33 pursuant to the provisions of P.L.1952, c.174 (C.39:6-61 et seq.);
34 the New Jersey Automobile Full Insurance Underwriting
35 Association, created pursuant to the provisions of P.L.1983, c.65
36 (C.17:30E-1 et seq.); **[and]** the Market Transition Facility created
37 pursuant to the provisions of section 88 of P.L.1990, c.8 (C.17:33B-
38 11); and "the workers' compensation security fund" created pursuant
39 to R.S.34:15-105.

40 (cf: P.L.2004, c.175, s.3)
41

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

44 8. a. The association shall:

45 (1) Be obligated to the extent of the covered claims against an
46 insolvent insurer incurred prior to or 90 days after the determination
47 of insolvency, or before the policy expiration date if less than 90
48 days after said determination, or before the insured replaces the

1 policy or causes its cancellation, if he does so within 90 days of the
2 determination, except that in the case of private passenger
3 automobile insurance, the commissioner may, depending upon
4 factors such as the level of that insurance written by the insolvent
5 insurer, the volume of claims arising under that insurance, and
6 conditions currently relating to the voluntary market for that
7 insurance in this State, order the association to treat all or a portion
8 of claims arising under that insurance as covered claims if they are
9 incurred prior to or after the determination of insolvency, but before
10 the policy expiration date or the date upon which the insured
11 replaces the policy or causes its cancellation, and otherwise qualify
12 as covered claims under the act. That obligation shall include only
13 that amount of each covered claim which is less than \$300,000.00
14 per claimant and subject to any applicable deductible and self-
15 insured retention contained in the policy, except that the
16 \$300,000.00 limitation shall not apply to a covered claim arising
17 out of insurance coverage mandated by section 4 of P.L.1972, c.70
18 (C.39:6A-4), or to a valid claim for compensation or death benefits
19 arising out of workers' compensation insurance coverage under
20 R.S.34:15-1 et seq. or under the federal "Longshore and Harbor
21 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et
22 seq.). In the case of benefits payable under subsection a. of section
23 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for
24 payment of benefits in an amount not to exceed the amount set forth
25 in section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of workers'
26 compensation claims, the association shall administer the payment
27 of valid claims with respect to the injury or death of workers under
28 R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers'
29 Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), arising
30 from insurance coverage of risks located or resident in this State, as
31 provided in R.S.34:15-105 and secured through a standard, primary
32 workers' compensation policy. The commissioner may pay a
33 portion of or defer the association's obligations for covered claims
34 based on the monies available to the association. In no event shall
35 the association be obligated to a policyholder or claimant in an
36 amount in excess of the limits of liability stated in the policy of the
37 insolvent insurer from which the claim arises. Any obligation of
38 the association to defend an insured shall cease upon the
39 association's payment or tender of an amount equal to the lesser of
40 the association's covered claim statutory limit or the applicable
41 policy limit;

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

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

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

- 1 (b) The expenses of handling covered claims;
- 2 (c) The cost of examinations under section 13; and
- 3 (d) Other expenses authorized by this act.

4 The assessments of each member insurer shall be in the
5 proportion that the net direct written premiums of the member
6 insurer for the calendar year preceding the assessment bears to the
7 net direct written premiums of all member insurers for the calendar
8 year preceding the assessment.

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

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

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

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

46 (6) Handle claims through its employees or through one or more
47 insurers or other persons designated as servicing facilities.
48 Designation of a servicing facility is subject to the approval of the

1 commissioner, but such designation may be declined by a member
2 insurer. The association is designated as a servicing facility for the
3 administration of claim obligations of: (a) the New Jersey Surplus
4 Lines Insurance Guaranty Fund; (b) the New Jersey Medical
5 Malpractice Reinsurance Association; **[and]** (c) the Unsatisfied
6 Claim and Judgment Fund; and (d) "the workers' compensation
7 security fund." The association may also be designated or may
8 contract as a servicing facility for any other entity which may be
9 recommended by the association's board of directors and approved
10 by the commissioner;

11 (7) Reimburse each servicing facility for obligations of the
12 association paid by the facility and for expenses incurred by the
13 facility while handling claims on behalf of the association and shall
14 pay the other expenses of the association authorized by this act;

15 (8) Make loans to the New Jersey Surplus Lines Insurance
16 Guaranty Fund **[and]**, the Unsatisfied Claim and Judgment Fund,
17 and "the workers' compensation security fund" in such amounts and
18 on such terms as the board of directors may determine are necessary
19 or appropriate to effectuate the purposes of **[P.L.2003, c.89**
20 **(C.17:30A-2.1 et al.)]** P.L.1974, c.17 (C.17:30A-1 et seq.),
21 P.L.1984, c.101 (C.17:22-6.70 et seq.), P.L.1952, c.174 (C.39:6-61
22 et seq.) and R.S.34:15-103 et seq. in accordance with the plan of
23 operation; provided, however, no such loan transaction shall be
24 authorized to the extent the federal tax exemption of the association
25 or any entity for which it serves as administrator would be
26 withdrawn or the association or any such serviced entity would
27 otherwise incur any federal tax or penalty as a result of such
28 transaction;

29 (9) (Deleted by amendment, P.L.2004, c.175.)

30 (10) (Deleted by amendment, P.L.2004, c.175.)

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

35 (12) Undertake all of the management, administrative, and
36 claims activities of the Unsatisfied Claim and Judgment Fund,
37 created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New
38 Jersey Automobile Full Insurance Underwriting Association,
39 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), **[and]** the
40 Market Transition Facility, created pursuant to section 88 of
41 P.L.1990, c.8 (C.17:33B-11) and "the workers' compensation
42 security fund," created pursuant to R.S.34:15-105.

43 b. The association may:

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

46 (2) Borrow and separately account for funds from any source,
47 including, but not limited to, the New Jersey Surplus Lines

1 Insurance Guaranty Fund **[and]**, the Unsatisfied Claim and
2 Judgment Fund, and "the workers' compensation security fund," in
3 such amounts and on such terms, as the board of directors may
4 determine are necessary or appropriate to effectuate the purpose of
5 this act in accordance with the plan of operation; provided,
6 however, no such borrowing transaction shall be authorized to the
7 extent the federal tax exemption of the association or any entity for
8 which it serves as administrator would be withdrawn or the
9 association or any such serviced entity would otherwise incur any
10 federal tax or penalty as a result of such transaction;

11 (3) Sue or be sued;

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

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

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

22 (cf: P.L.2004, c.175, s.4)

23

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

26 9. a. (1) The association shall submit to the commissioner a plan
27 of operation and any amendments thereto necessary or suitable to
28 assure the fair, reasonable, and equitable administration of the
29 association. The plan of operation and any amendments thereto
30 shall become effective upon approval in writing by the
31 commissioner;

32 (2) If the association fails to submit a plan of operation
33 acceptable to the commissioner within 90 days following the
34 effective date of this act, or if at any time thereafter the association
35 fails to submit an acceptable amendment to the plan, the
36 commissioner shall, after notice and hearing adopt and promulgate
37 such reasonable rules as are necessary or advisable to effectuate the
38 provisions of this act. Such rules shall continue in force until
39 modified by the commissioner or superseded by a plan submitted by
40 the association and approved by the commissioner.

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

42 c. The plan of operation shall:

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

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

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

1 (4) Establish procedures by which claims may be filed with the
2 association and establish acceptable forms of proof of covered
3 claims. Notice of claims to the receiver or liquidator of the
4 insolvent insurer shall be deemed notice to the association or its
5 agent and a list of such claims shall be periodically submitted to the
6 association by the receiver or liquidator;

7 (5) Establish regular places and times for meetings of the board
8 of directors;

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

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

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

17 (9) Contain additional provisions necessary or proper for the
18 execution of the powers and duties of the association;

19 (10) Establish procedures for the transition and consolidation of
20 compatible functions of the Unsatisfied Claim and Judgment Fund,
21 the New Jersey Automobile Full Insurance Underwriting
22 Association **[and]** the Market Transition Facility, and "the workers'
23 compensation security fund" in order to eliminate redundant
24 operational activities and promote greater efficiencies in claims
25 handling and other operations;

26 (11) Establish procedures as necessary or proper to finance the
27 operation of and account for receipts and disbursements as well as
28 other financial transactions involving the Unsatisfied Claim and
29 Judgment Fund, the New Jersey Automobile Full Insurance
30 Underwriting Association **[and]** the Market Transition Facility,
31 and "the workers' compensation security fund";

32 (12) Create such advisory boards as necessary or proper to assist
33 in the administration and management of the operations of the
34 Unsatisfied Claim and Judgment Fund.

35 d. The plan of operation may provide that any or all powers
36 and duties of the association except those under sections 8a.(3) and
37 8b.(2), are delegated to a corporation, association, or other
38 organization which performs or will perform functions similar to
39 those of this association, or its equivalent. Such a corporation,
40 association or organization shall be reimbursed as a servicing
41 facility would be reimbursed and shall be paid for its performance
42 of the functions of the association. A delegation under this
43 subsection shall take effect only with the approval of both the board
44 of directors and the commissioner, and may be made only to a
45 corporation, association, or organization which extends protection
46 not substantially less favorable and effective than that provided by
47 this act.

48 (cf: P.L.2003, c.89, s.5)

1 11. R.S.34:15-109, R.S.34:15-110, and R.S.34:15-118 through
2 34:15-120 are repealed.

3

4 12. This act shall take effect on July 1, 2009.

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STATEMENT

8

9 This bill retains "the workers' compensation security fund" as a
10 separate legal entity, but transfers its management, administration
11 and claims activities to the New Jersey Property-Liability Insurance
12 Guaranty Association (PLIGA). PLIGA already performs similar
13 functions for the Unsatisfied Claim and Judgment Fund (UCJF) as
14 well as the former residual market mechanisms for automobile
15 insurance (the JUA and MTF). The acquired expertise and
16 experience of PLIGA in administering these functions for such
17 other entities invites this consolidation, which is expected to
18 achieve administrative and operational efficiencies in handling
19 claims asserted against certain insolvent insurers that write workers'
20 compensation insurance in the State.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2865

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2009

The Senate Labor Committee reports favorably Senate Bill No. 2865.

This bill retains "the workers' compensation security fund" as a separate legal entity, but transfers its management, administration and claims activities to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA). PLIGA already performs similar functions for the Unsatisfied Claim and Judgment Fund (UCJF) as well as the former residual market mechanisms for automobile insurance (the JUA and MTF). The acquired expertise and experience of PLIGA in administering these functions for such other entities invites this consolidation, which is expected to achieve administrative and operational efficiencies in handling claims asserted against certain insolvent insurers that write workers' compensation insurance in the State.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2865
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JANUARY 6, 2010

SUMMARY

- Synopsis:** Transfers management, administration and duties of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.
- Type of Impact:** A revenue and expenditure decrease for the Workers' Compensation Security Fund.
- Agencies Affected:** Department of Banking and Insurance; New Jersey Property-Liability Insurance Guaranty Association.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
State Cost	(\$25 million)	(\$25 million)	(\$25 million)
State Revenue	(\$21.8 million)	(\$19 million)	(\$19 million)

- This bill transfers the management, administration and claims activities of the Workers' Compensation Security Fund (WCSF), created pursuant to R.S.34:15-105, from the Department of Banking and Insurance to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA). Since the State will not be directly responsible for collecting assessments for, or disbursing benefits from, the WCSF, the revenue and expenditures will no longer be State revenue or expenditures.
- The Office of Legislative Services estimates that this bill will result in the loss of an estimated \$21.8 million in FY2010, and \$19 million in both FY2011 and FY2012, in State revenue annually. Additionally, the bill will result in a State expenditure decrease of an estimated \$25 million annually.
- The balance in the WCSF is estimated to be approximately \$20.9 million at the end of Fiscal Year 2010. This balance will also be transferred to PLIGA.

BILL DESCRIPTION

Senate Bill No. 2865 of 2009 retains "the workers' compensation security fund" as a separate legal entity, but transfers its management, administration and claims activities to the PLIGA.

The PLIGA already performs similar functions for the Unsatisfied Claim and Judgment Fund (UCJF) as well as the former residual market mechanisms for automobile insurance (the JUA and MTF). The acquired expertise and experience of PLIGA in administering these functions for such other entities invites this consolidation, which is expected to achieve administrative and operational efficiencies in handling claims asserted against certain insolvent insurers that write workers' compensation insurance in the State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

This bill transfers the management, administration and claims activities of the Workers' Compensation Security Fund (WCSF), created pursuant to R.S.34:15-105, from the Department of Banking and Insurance to the PLIGA. Since the State will not be directly responsible for collecting assessments for, or disbursing benefits from, the WCSF, the revenue and expenditures will no longer be State revenue or expenditures.

The Office of Legislative Services estimates that this bill will result in the loss of an estimated \$21.8 million in FY 2010, and \$19 million in both FY 2011 and FY 2012, in State revenue annually. Additionally, the bill will result in a State expenditure decrease of an estimated \$25 million annually.

The balance in the WCSF is estimated to be approximately \$20.9 million at the end of Fiscal Year 2010. This balance will also be transferred to PLIGA.

Section: Commerce, Labor and Industry

Analyst: Robin C. Ford
Associate Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).