

17:30A-8

LEGISLATIVE HISTORY CHECKLIST
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(New Jersey Property--Guaranty)

NJSA: 17:30A-8

LAWS OF: 1995 **CHAPTER:** 396

BILL NO: S1451

SPONSOR(S): Zane and Cardinale

DATE INTRODUCED: September 26, 1994

COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** December 11, 1995 Re-enacted 1-9-96
SENATE: February 9, 1995 Re-enacted 1-9-96

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

AC

KBP:pp

P.L.1995, CHAPTER 396, *approved January 10, 1996*
1994 Senate No. 1451 (*Second Reprint*)

AN ACT concerning certain assessments of certain insurer members of the New Jersey Property-Liability Insurance Guaranty Association and amending P.L.1974, c.17.

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

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

8. a. The association shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred, in the case of private passenger automobile insurance, prior to or after the determination of insolvency, but before the policy expiration date or the date upon which the insured replaces the policy or causes its cancellation, or in the case of insurance other than private passenger automobile insurance, covered claims against such insolvent insurer incurred prior to or 90 days after the determination of insolvency, or before the policy expiration date if less than 90 days after said determination, or before the insured replaces the policy or causes its cancellation, if he does so within 90 days of the determination, but such obligation shall include only that amount of each covered claim which is less than \$300,000.00 and subject to any applicable deductible contained in the policy, except that the \$300,000.00 limitation shall not apply to a covered claim arising out of insurance coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for payment of benefits in an amount not to exceed \$75,000.00. Benefits paid in excess of such amount shall be recoverable by the association from the Unsatisfied Claim and Judgment Fund pursuant to the provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1). In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the limits of liability stated in the policy of the insolvent insurer from which the claim arises;

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

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

(a) The obligation of the association under paragraph (1) of this subsection;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows.

¹ Senate SCM committee amendments adopted November 21, 1994.

² Senate amendments adopted in accordance with Governor's recommendations January 9, 1996.

- (b) The expenses of handling covered claims;
- (c) The cost of examinations under section 13; and
- (d) Other expenses authorized by this act, excluding expenses incurred by the association pursuant to paragraphs (9) and (10) of this subsection.

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

Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed pursuant to this paragraph (3) in any year in an amount greater than 2% of that member insurer's net direct written premiums for the calendar year preceding the assessment.

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

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

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

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer;

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and

shall pay the other expenses of the association authorized by this act;

(8) Make loans to the New Jersey Surplus Lines Insurance Guaranty Fund in accordance with the provisions of the "New Jersey Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et al.);

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

(a) For the purposes of this paragraph, "net direct written premiums" shall not include medical malpractice liability insurance premiums paid to member insurers to which an additional charge has been applied for deposit in the New Jersey Medical Malpractice Reinsurance Recovery Fund as provided in the "Medical Malpractice Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the regulations promulgated pursuant thereto.

(b) ¹Upon certification by the commissioner that there are sufficient monies on deposit in the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), "net direct written premiums" shall not include premiums of] In the event that the commissioner certifies that loans in amounts less than \$160 million per calendar year as provided in paragraph (10) of this subsection will satisfy the current and anticipated financial obligations of the Market Transition Facility,^{1 2}without reference to the amount of funds remaining from the sale of the Market Transition Facility Senior Lien Revenue Bonds,² a member insurer, and all of its affiliates as defined in subsection a. of section 1 of P.L.1970, c.22 (C.17:27A-1), ¹shall ²[not]² be subject to ²a reduced² assessment pursuant to this paragraph¹ if the member insurer and all such affiliates: (i) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973; (ii) were not assessed as members of the Market Transition Facility as established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had not relinquished voluntarily any expectation they may have had for the repayment of loans made pursuant to paragraph (10) of this subsection, as provided by paragraph (2) of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or settlement agreement approved by any court of competent jurisdiction, on or before the effective date of this 1994 amendatory act². The reduced assessment of such members shall be equal to their

proportionate share of the difference between the amount certified by the commissioner and the total of the assessment of all other insurers subject to such assessment. If the amount of such difference is zero or less, the reduced assessment shall be zero²;

(10) Make loans in the amount of \$160 million per calendar year, beginning in calendar year 1990, or upon certification by the commissioner ², as provided by paragraph (b) of subsection (9) of this section,² that ¹[there are sufficient monies on deposit in the New Jersey Automobile Insurance Guaranty Fund to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association] lesser amounts will satisfy the current and anticipated financial obligations of the Market Transition Facility¹, such lesser amounts as may be collected pursuant to paragraph (9) of this subsection, to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except that no loan shall be made pursuant to this paragraph after December 31, 1997. ¹In no event shall member insurers subject to assessments have their financial obligation increased due to ²[exemptions] reductions² granted pursuant to paragraph (9) of this subsection.¹

b. The association may:

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

(2) Borrow funds necessary to effectuate the purpose of this act in accordance with the plan of operation;

(3) Sue or be sued;

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

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

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

(cf: P.L.1992, c.191, s.1)

2. This act shall take effect immediately.

Reduces assessments of certain insurers for payment of MTF debt.

SPONSOR'S STATEMENT

STATEMENT

This bill exempts the net direct written premiums of certain insurers from calculation of the assessments for payment of the Market Transition Facility (MTF) debt once the financial obligations of the former JUA (New Jersey Automobile Full Insurance Underwriting Association) have been financed.

The bill provides that once the Commissioner of Insurance certifies that there are sufficient monies on deposit in the New Jersey Automobile Insurance Guaranty Fund to satisfy the current and anticipated financial obligations of the JUA, net direct written premiums of a member insurer of the New Jersey Property-Liability Guaranty Association (PLIGA) shall not be included in calculating the assessment if the member insurer and all of its affiliates: (1) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973; (2) were not assessed as members of the Market Transition Facility as established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (3) had not relinquished voluntarily any expectation for the repayment of loans made by PLIGA pursuant to any court order, or settlement agreement approved by a court of competent jurisdiction.

The bill further provides that once the commissioner certifies that there are sufficient monies on deposit to satisfy the current and anticipated financial obligations of the JUA, the annual loans from PLIGA to the New Jersey Automobile Insurance Guaranty Fund may be reduced from the current statutory amount of \$160 million per year, to the amount collected according to the revised calculation provided by the bill.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1451

STATE OF NEW JERSEY

DATED: NOVEMBER 20, 1995

The Assembly Insurance Committee reports favorably Senate Bill No. 1451(1R).

This bill exempts certain insurers from assessment for payment of the Market Transition Facility (MTF) debt once the current and anticipated financial obligations of the former MTF are satisfied.

The bill provides that once the Commissioner of Insurance certifies that loans in amounts of less than \$160 million per calendar year by the New Jersey Property-Liability Guaranty Association (PLIGA) satisfy the current and anticipated financial obligations of the MTF, a member insurer of the PLIGA shall not be assessed if the member insurer and all of its affiliates: (1) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973, (2) were not assessed as members of the Market Transition Facility as established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (3) had not relinquished voluntarily any expectation for the repayment of loans made by PLIGA pursuant to any court order or settlement agreement approved by a court of competent jurisdiction.

The bill further provides that once the commissioner certifies that lesser amounts will satisfy the current and anticipated financial obligations of the MTF, the annual loans from PLIGA may be reduced from the current statutory amount of \$160 million per year.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1451

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1451.

This bill, as amended, exempts certain insurers from assessment for payment of the Market Transition Facility (MTF) debt once the current and anticipated financial obligations of the former MTF are satisfied.

The bill provides that once the Commissioner of Insurance certifies that loans in amounts less than \$160 million per calendar year by the New Jersey Property-Liability Guaranty Association (PLIGA) satisfy the current and anticipated financial obligations of the MTF, a member insurer of the PLIGA shall not be assessed if the member insurer and all of its affiliates: (1) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973; (2) were not assessed as members of the Market Transition Facility as established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (3) had not relinquished voluntarily any expectation for the repayment of loans made by PLIGA pursuant to any court order or settlement agreement approved by a court of competent jurisdiction.

The bill further provides that once the commissioner certifies that lesser amounts will satisfy the current and anticipated financial obligations of the MTF, the annual loans from PLIGA may be reduced from the current statutory amount of \$160 million per year.

- 1 Guaranty Fund created pursuant to section 23 of P.L.1990, c.8
2 (C.17:33B-5), except that no loan shall be made pursuant to this
3 paragraph after December 31, 1997.
- 4 b. The association may:
- 5 (1) Employ or retain such persons as are necessary to handle
6 claims and perform such other duties of the association;
- 7 (2) Borrow funds necessary to effectuate the purpose of this
8 act in accordance with the plan of operation;
- 9 (3) Sue or be sued;
- 10 (4) Negotiate and become a party to such contracts as are
11 necessary to carry out the purpose of this act;
- 12 (5) Perform such other acts as are necessary or proper to
13 effectuate the purpose of this act;
- 14 (6) Refund to the member insurers in proportion of the
15 contribution of each member insurer that amount by which the
16 assets exceed the liabilities if, at the end of any calendar year,
17 the board of directors finds that the assets of the association
18 exceed the liabilities, as estimated by the board of directors for
19 the coming year.
- 20 (cf: P.L.1992, c.191, s.1)
- 21 2. This act shall take effect immediately.
- 22
23

24 STATEMENT

25

- 26 This bill exempts the net direct written premiums of certain
27 insurers from calculation of the assessments for payment of the
28 Market Transition Facility (MTF) debt once the financial
29 obligations of the former JUA (New Jersey Automobile Full
30 Insurance Underwriting Association) have been financed.
- 31 The bill provides that once the Commissioner of Insurance
32 certifies that there are sufficient monies on deposit in the New
33 Jersey Automobile Insurance Guaranty Fund to satisfy the
34 current and anticipated financial obligations of the JUA, net
35 direct written premiums of a member insurer of the New Jersey
36 Property-Liability Guaranty Association (PLIGA) shall not be
37 included in calculating the assessment if the member insurer and
38 all of its affiliates: (1) did not issue or renew a policy of private
39 passenger automobile insurance in this State on or after January
40 1, 1973; (2) were not assessed as members of the Market
41 Transition Facility as established by section 88 of P.L.1990, c.8
42 (C.17:33B-11); and (3) had not relinquished voluntarily any
43 expectation for the repayment of loans made by PLIGA pursuant
44 to any court order, or settlement agreement approved by a court
45 of competent jurisdiction.
- 46 The bill further provides that once the commissioner certifies
47 that there are sufficient monies on deposit to satisfy the current
48 and anticipated financial obligations of the JUA, the annual loans
49 from PLIGA to the New Jersey Automobile Insurance Guaranty
50 Fund may be reduced from the current statutory amount of \$160
51 million per year, to the amount collected according to the revised
52 calculation provided by the bill.

January 8, 1996

SENATE BILL NO. 1451
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1451 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

Senate Bill No. 1451 (First Reprint) would exempt approximately ninety insurers from assessment by the New Jersey Property Liability Guaranty Association ("PLIGA") pursuant to the provisions of section 8 of P.L. 1974, c.17 (C.17:30A-8). The exempted insurers are those that: (1) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973; (2) were never assessed as members of the Market Transition Facility ("MTF") established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (3) have never relinquished any expectation of repayment of certain "loans" made by PLIGA. The exemption would only apply if the Commissioner of Insurance were to certify that PLIGA loans in an amount less than \$160 million per calendar year would satisfy the current and anticipated liabilities of the MTF.

In 1994, a potential inability of the MTF to fund all of its expenses and claims payments, together with litigation concerning the ability of the MTF to assess its members to fund this to the enactment of an overall plan to fund the liabilities of the MTF and the pending litigation: was embodied in the Good Driver Protection Act of :
c.57 (C.34:1B-21.1 et seq.). This carefully crafted plan contemplated the availability of the full amount of remaining PLIGA assessments, originally established by section 74 of P.L.1990, c.8 (C.17:30A-8), together with the proceeds of the Market Transition

Veto message

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

Facility Senior Lien Revenue Bonds (the "MTF Bonds"), for the funding of the financial obligations of the MTF.

Senate Bill No. 1451 (First Reprint) could interfere with the full implementation of the MTF funding plan by reducing the availability of needed revenues. The exemption that this bill contemplates would result in a loss of PLIGA monies in the approximate amount of \$6 million. However, the bill also prevents PLIGA from making up any needed shortfall by precluding it from increasing the assessment of any other member insurers. Thus, unless the reduction in the needed PLIGA assessment is equal to or greater than the cumulative amount of the exemption, there would be funding shortfall.

Consequently, I recommend that the bill be amended to provide for a pro rata reduction, rather than a complete exemption, for the covered insurers. In addition, I recommend amending the bill to reflect the fact that the Commissioner's certification should, according to the MTF funding plan, be made without reference to the amount of funds remaining from the sale of the MTF Bonds. It is imperative that the current and anticipated financial obligations of the MTF be fully funded and that implementation of the MTF funding plan not be jeopardized to accommodate the desire of a limited segment of the insurance industry for exemption from PLIGA assessments.

Therefore, I herewith return Senate Bill No. 1451 (First Reprint) and recommend that it be amended as follows:

- Page 3, Section 1, Line 37: After "Facility," insert "without reference to the amount of funds remaining from the sale of the Market Transition Facility Senior Lien Revenue Bonds,"
- Page 3, Section 1, Line 39: Delete "not" after "to" insert "a reduced"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

3

Page 3, Section 1, Line 51:

After "act" insert ". The reduced assessment of such members shall be equal to their proportionate share of the difference between the amount certified by the Commissioner and the total of the assessment of all other insurers subject to such assessment. If the amount of such difference is zero or less, the reduced assessment shall be zero"

Page 3, Section 1, Line 54:

After "commissioner" insert ", as provided by paragraph (b) of subsection (9) of this section"

Page 4, Section 1, Line 12:

Delete "exemptions" insert reductions"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Margaret M. Foti

Chief Counsel to the Governor