

17:30A-8

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Medical malpractice insurance
--exempt from JUA)

NJSA: 17:30A-8

LAWS OF: 1992 CHAPTER: 191

BILL NO: A1117

SPONSOR(S) Franks

DATE INTRODUCED: March 23, 1992

COMMITTEE: ASSEMBLY: Insurance
SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: May 18, 1992
SENATE: May 21, 1992

DATE OF APPROVAL: December 17, 1992 without Governor's approval

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KEG:pp

P.L.1992, CHAPTER 191, filed December 17, 1992
1992 Assembly No. 1117

1 AN ACT concerning assessments against certain insurers and
2 amending P.L.1974, c.17.

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

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

8 8. a. The association shall:

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

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

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

40 (a) The obligation of the association under paragraph [a.](1) of
41 this [section] subsection;

42 (b) The expenses of handling covered claims;

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

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

Matter underlined ~~thus~~ is new matter.

1 (d) Other expenses authorized by this act, excluding expenses
2 incurred by the association pursuant to paragraphs (9) and (10) of
3 this subsection.

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
7 the net direct written premiums of all member insurers for the
8 calendar year preceding the assessment.

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

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

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

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

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

51 (7) Reimburse each servicing facility for obligations of the
52 association paid by the facility and for expenses incurred by the
53 facility while handling claims on behalf of the association and
54 shall pay the other expenses of the association authorized by this
55 act;

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

5 (9) Assess member insurers in amounts necessary to make
6 loans pursuant to paragraph (10) of this subsection. [Estimated]
7 The estimated assessments of each member insurer shall be in the
8 proportion that the net direct written premiums of the member
9 insurer for the calendar year preceding the assessment bears to
10 the net direct written premiums of all member insurers for the
11 calendar year preceding the assessment with actual assessments
12 adjusted in the succeeding year based on the proportion that the
13 assessed member insurer's net direct written premiums in the
14 year of assessment bears to the net direct written premiums of
15 all member insurers for that year. For the purposes of this
16 paragraph, "net direct written premiums" shall not include
17 medical malpractice liability insurance premiums paid to member
18 insurers to which an additional charge has been applied for
19 deposit in the New Jersey Medical Malpractice Reinsurance
20 Recovery Fund as provided in the "Medical Malpractice Liability
21 Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
22 regulations promulgated pursuant thereto;

23 (10) Make loans in the amount of \$160 million per calendar
24 year, beginning in calendar year 1990, to the New Jersey
25 Automobile Insurance Guaranty Fund created pursuant to section
26 23 of P.L.1990, c.8 (C.17:33B-5), except that no loan shall be
27 made pursuant to this paragraph after December 31, 1997.

28 b. The association may:

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

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

33 (3) Sue or be sued;

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

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

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

44 (cf: P.L.1990, c.8, s.74)

45 2. This act shall take effect immediately and shall be
46 retroactive to March 8, 1990.

47

48

49

50

STATEMENT

51 This bill excludes medical malpractice liability insurance
52 premiums which are surcharged for the establishment of the New
53 Jersey Medical Malpractice Reinsurance Recovery Fund from the
54 formula for determining assessments on member insurers of the
55 New Jersey Property-Liability Insurance Guaranty Association to

1 satisfy the financial obligations of the New Jersey Automobile
2 Fall Insurance Underwriting Association, or JUA. Medical
3 practitioners, and ultimately their patients, already bear the
4 burden of continuing extensive surcharge assessments imposed
5 upon them to bail out the insolvent and defunct New Jersey
6 Medical Malpractice Reinsurance Association.

7
8
9
10

11 Excludes certain medical malpractice insurance premiums from
12 JUA debt assessments under the FAIR Act.

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

5 (9) Assess member insurers in amounts necessary to make
6 loans pursuant to paragraph (10) of this subsection. [Estimated]
7 The estimated assessments of each member insurer shall be in the
8 proportion that the net direct written premiums of the member
9 insurer for the calendar year preceding the assessment bears to
10 the net direct written premiums of all member insurers for the
11 calendar year preceding the assessment with actual assessments
12 adjusted in the succeeding year based on the proportion that the
13 assessed member insurer's net direct written premiums in the
14 year of assessment bears to the net direct written premiums of
15 all member insurers for that year. For the purposes of this
16 paragraph, "net direct written premiums" shall not include
17 medical malpractice liability insurance premiums paid to member
18 insurers to which an additional charge has been applied for
19 deposit in the New Jersey Medical Malpractice Reinsurance
20 Recovery Fund as provided in the "Medical Malpractice Liability
21 Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
22 regulations promulgated pursuant thereto;

23 (10) Make loans in the amount of \$160 million per calendar
24 year, beginning in calendar year 1990, to the New Jersey
25 Automobile Insurance Guaranty Fund created pursuant to section
26 23 of P.L.1990, c.8 (C.17:33B-5), except that no loan shall be
27 made pursuant to this paragraph after December 31, 1997.

28 b. The association may:

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

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

33 (3) Sue or be sued;

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

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

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

44 (cf: P.L.1990, c.8, s.74)

45 2. This act shall take effect immediately and shall be
46 retroactive to March 8, 1990.

47

48

49

STATEMENT

50

51 This bill excludes medical malpractice liability insurance
52 premiums which are surcharged for the establishment of the New
53 Jersey Medical Malpractice Reinsurance Recovery Fund from the
54 formula for determining assessments on member insurers of the
55 New Jersey Property-Liability Insurance Guaranty Association to

1 satisfy the financial obligations of the New Jersey Automobile
2 Full Insurance Underwriting Association, or JUA. Medical
3 practitioners, and ultimately their patients, already bear the
4 burden of continuing extensive surcharge assessments imposed
5 upon them to bail out the insolvent and defunct New Jersey
6 Medical Malpractice Reinsurance Association.

7

8

9

10

11 Excludes certain medical malpractice insurance premiums from
12 JUA debt assessments under the FAIR Act.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1117

STATE OF NEW JERSEY

DATED: MAY 14, 1992

The Assembly Insurance Committee reports favorably Assembly, Bill No. 1117

This bill excludes medical malpractice liability insurance premiums which are surcharged for the establishment of the New Jersey Medical Malpractice Reinsurance Recovery Fund from the formula for determining assessments on member insurers of the New Jersey Property-Liability Insurance Guaranty Association to satisfy the financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, or JUA.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY, No. 1117

STATE OF NEW JERSEY

DATED: June 5, 1992

Assembly Bill No. 1117 of 1992 excludes medical malpractice liability insurance premiums which are surcharged for the establishment of the New Jersey Medical Malpractice Reinsurance Recovery Fund from the formula for determining assessments on member insurers of the New Jersey Property-Liability Insurance Guaranty Association to satisfy the financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, or JUA.

The Department of Insurance and the Office of Management and Budget have not provided cost estimates concerning the fiscal impact of this bill.

The Office of Legislative Services (OLS), however, notes that the bill has no fiscal impact on the State, because it affects only the assessments made on member insurers of the New Jersey Property-Liability Insurance Guaranty Association.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

July 20, 1992

ASSEMBLY BILL NO. 1117

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14, of the Constitution, I herewith return Assembly Bill No. 1117 without my approval.

This bill excludes medical malpractice premiums paid by physicians and certain other medical professionals to the state's medical malpractice insurers from assessments imposed by the Fair Automobile Insurance Reform Act (FAIRA) to retire the debt of the New Jersey Full Insurance Underwriting Association (JUA).

I have carefully considered each of the several arguments that have been advanced in favor of this bill.

Physicians have argued that because they already pay into a fund called the Medical Malpractice Reinsurance Recovery Fund (Recovery Fund) that they should not be obligated to pay into the New Jersey Automobile Insurance Guaranty Fund. It has been argued that this dual payment amounts to a type of double taxation.

While physicians do pay into the Recovery Fund, they have benefited by its existence, which was created by the State to insure them at a time when commercial insurers refused to provide them medical malpractice insurance. The Recovery Fund established an environment that permitted doctors to continue their practice of medicine because of their access to State-provided malpractice insurance offered at competitive rates.

FAIRA also requires all insurers who are members of the Property-Liability Insurance Guaranty Association (PLIGA) to pay assessments to retire the JUA debt. This provision of FAIRA has been consistently upheld by the courts against a multitude of legal challenges. The commercial insurers who now write medical malpractice insurance in New Jersey are also members of PLIGA and have been required to pay the FAIRA assessments even though they do not write auto insurance. This provision, too, has been upheld by the courts.

If this bill were to become law it would afford an unfair benefit to the medical malpractice insurers, who are PLIGA members, and cause other

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

insurance companies, who are PLIGA members, to pay greater amounts to retire the JUA debt, and thereby raising substantial concerns under principles of equal protection, according to the Attorney General.

It has also been argued by certain medical malpractice insurers that their status as "reciprocal" exempts them from paying the JUA assessments. The Insurance Department has historically treated all reciprocals as subject to FAIRA assessments. That matter is now in litigation and will be resolved in that forum.

Finally, enactment of this law would require the immediate refund of over \$9 million from the New Jersey Automobile Insurance Guaranty Fund at a time when the JUA, which is entirely supported by the Guaranty Fund, has temporarily deferred the payment of certain personal injury claims to injured parties. It would be wrong to allow these refunds when at the same time the JUA is unable to timely pay all claims because of cash flow difficulties.

Accordingly, I herewith return Assembly Bill No. 1117 without my approval.

Respectfully

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ M. Robert DeCotiis

Chief Counsel to the Governor