

SENATE, No. 1580

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MAY 10, 2004

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

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



S1580 GILL

2

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

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

6
7 1. Section 2 of P.L.1974, c.17 (C.17:30A-2) is amended to read as
8 follows:

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

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

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

32 5. As used in this act:

33 [a. (Deleted by amendment.)

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

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

41 [c.] "Commissioner" means the Commissioner of Banking and
42 Insurance of this State;

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

Matter underlined thus is new matter.

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

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

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

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

1 insurer, whichever date occurs later;

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

5

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

8 8. a. The association shall:

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

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

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

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

8 (b) The expenses of handling covered claims;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 b. The association may:

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

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

19 (3) Sue or be sued;

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

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

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

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

30

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

33 10. a. The commissioner shall:

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

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

43 b. The commissioner may:

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

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

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

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

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

15

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

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

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

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

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

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

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

34 35 36 STATEMENT

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

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

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

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

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

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

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

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