

P.L. 2004, CHAPTER 165, *approved December 7, 2004*

Senate, No. 1581 (*First Reprint*)

1 **AN ACT** concerning the New Jersey Surplus Lines Insurance Guaranty
2 Fund and amending and supplementing P.L.1984, c.101.

3

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

6

7 1. Section 1 of P.L.1984, c.101 (C.17:22-6.71) is amended to read
8 as follows:

9 1. The purpose of this act is to provide a mechanism for the
10 payment of covered claims under certain insurance policies issued by
11 eligible surplus lines insurers; to **[avoid]** minimize excessive delays in
12 the payment of the covered claims against insolvent, eligible,
13 nonadmitted insurers; and to avoid financial loss to claimants or
14 policyholders because of the insolvency of an eligible, nonadmitted
15 insurer.

16 On and after July 27, 1984 and before June 25, 2002, P.L.1984,
17 c.101 (C.17:22-6.70 et seq.) shall apply to all property and casualty
18 lines of direct insurance authorized under R.S.17:17-1, except
19 workers' compensation insurance, title insurance, surety bonds, credit
20 insurance, mortgage guaranty insurance, municipal bond coverage,
21 fidelity insurance, investment return assurance, and ocean marine
22 insurance. This act shall also not apply to reinsurance of any kind.

23 On or after June 25, 2002, P.L.1984, c.101 (C.17:22-6.70 et seq.)
24 shall apply only to medical malpractice liability insurance as defined in
25 subsection d. of section 3 of P.L.1975, c.301 (C.17:30D-3) and
26 property insurance covering owner occupied dwellings of less than
27 four dwelling units. On or after June 25, 2002, P.L.1984, c.101
28 (C.17:22-6.70 et seq.) shall not apply to reinsurance of any kind.
29 (cf: P.L.2002, c.30, s.2)

30

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

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

38 "Association" means the New Jersey Property-Liability Insurance
39 Guaranty Association created pursuant to P.L.1974, c.17 (C.17:30A-1

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 May 17, 2004.

1 et seq.).

2 "Commissioner" means the Commissioner of Banking and
3 Insurance.

4 [b.] "Covered claim" means an unpaid claim, including a claim for
5 unearned premiums, which arises out of and is within the coverage,
6 and not in excess of the applicable limits of an insurance policy to
7 which this act applies, and which was issued by a surplus lines insurer
8 which was eligible to transact insurance business in this State at the
9 time the policy was issued and which has been determined to be an
10 insolvent insurer on or after June 1, 1984, but prior to June 25, 2002,
11 if (1) the claimant or policyholder is a resident of this State at the time
12 of the occurrence of the insured event for which a claim has been
13 made, provided that for an entity other than an individual, the
14 residence of the claimant or insured is the state in which its principal
15 place of business was located at the time of the insured event; or (2)
16 [the property from which] the claim [arises is permanently located]
17 is a first party claim for damage to property with a permanent location
18 in this State. A "covered claim" which arises because of an insolvency
19 occurring on or after June 25, 2002 shall be limited to an unpaid claim,
20 including a claim for unearned premiums, which arises out of either
21 medical malpractice liability insurance coverage or property insurance
22 covering owner occupied dwellings of less than four dwelling units
23 within the coverage, and not in excess of the applicable limits, of an
24 insurance policy to which P.L.1984, c.101 (C.17:22-6.70 et seq.)
25 applies, and which was issued by a surplus lines insurer which was
26 eligible to transact insurance business in this State at the time the
27 policy was issued and which has been determined to be an insolvent
28 insurer on or after June 25, 2002, if (1) the claimant or policyholder
29 is a resident of this State at the time of the occurrence of the insured
30 event for which a claim has been made, provided that for an entity
31 other than an individual, the residence of the claimant or insured is the
32 state in which its principal place of business was located at the time of
33 the insured event; or (2) [the property from which] the claim [arises
34 is permanently located] is a first party claim for damage to property
35 with a permanent location in this State.

36 "Covered claim" shall not include: (1) any amount due any
37 reinsurer, insurance pool or underwriting association, as subrogation
38 recoveries or otherwise, except that a claim for any such amount,
39 asserted against a person insured under a policy issued by a surplus
40 lines insurer which has become an insolvent insurer, which, if it were
41 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,
42 or underwriting association, would be a "covered claim," may be filed
43 directly with the receiver of the insolvent insurer, but in no event may
44 any such claim be asserted in any legal action against the insured of
45 that insolvent insurer[. "Covered claim" shall also not include] ; (2)
46 amounts for interest on unliquidated claims[,] ; (3) punitive damages

1 unless covered by the policy[,] ;(4) counsel fees for prosecuting suits
2 for claims against the fund[, and] ;(5) assessments or charges for
3 failure by an insolvent insurer to have expeditiously settled claims[.
4 A "covered claim" shall not include] ;(6) counsel fees and other
5 claim expenses incurred prior to the date of insolvency; (7) a claim
6 filed with the fund , liquidator or receiver of an insolvent insurer after
7 the final date set by the court for the filing of claims against the
8 liquidator or receiver of an insolvent insurer or, if a final date is not set
9 by the court for the filing of claims against the liquidator or receiver
10 of an insolvent insurer, two years from the date of the order of
11 liquidation, unless the claimant demonstrates unusual hardship and the
12 commissioner approves of treatment of the claim as a "covered claim."
13 "Unusual hardship" shall be defined in regulations promulgated by the
14 commissioner. With respect to insurer insolvencies pending as of the
15 effective date of this [1996 amendatory act] P.L. , c. (C.)
16 (now before the Legislature as this bill), a "covered claim" shall not
17 include a claim filed with the fund, liquidator or receiver of an
18 insolvent insurer: [(1)] (a) more than one year after the effective date
19 of [this 1996 amendatory act] P.L.1996, c. 156 or [(2)] (b) the date
20 set by the court for the filing of claims against the liquidator or
21 receiver of the insolvent insurer, whichever date occurs later; and (8)
22 any first party claim by an insured whose net worth exceeds \$25
23 million on December 31 of the year prior to the year in which the
24 insurer becomes an insolvent insurer provided that the insured's net
25 worth on that date shall be deemed to include the aggregate net worth
26 of the insured and all of its affiliates as calculated on a consolidated
27 basis.

28 [c.] "Exhaust" means with respect to other insurance, the
29 application of a credit for the maximum limit under the policy
30 provided, however, in any case where continuous indivisible injury or
31 property damage occurs over a period of years as a result of exposure
32 to injurious conditions, exhaustion shall be deemed to have occurred
33 only after a credit for the maximum limits under all other coverages,
34 primary or excess, if applicable, issued in all other years has been
35 applied. With respect to health insurance and workers' compensation
36 insurance, "exhaust" means the application of a credit for the amount
37 of recovery under the insurance policy. With respect to another
38 insurance guaranty association or its equivalent, "exhaust" means the
39 application of a credit for the maximum statutory limit of recovery
40 from that other guaranty association or its equivalent. The amount of
41 a covered claim payable by the fund shall be reduced by the amount of
42 any applicable credits.

43 "Fund" means the New Jersey Surplus Lines Insurance Guaranty
44 Fund created pursuant to section 4 of this act.

45 [d.] "Insolvent insurer" means an insurer which was an eligible

1 surplus lines insurer at the time the insurance policy was issued or
2 when the insured event occurred, and [which is determined to be
3 insolvent] against whom an order of liquidation has been entered with
4 a finding of insolvency by a court of competent jurisdiction in this
5 State or the state or place in which the surplus lines insurer is
6 domiciled. "Insolvent insurer" does not include an admitted insurer or
7 any insurance exchange issuing insurance pursuant to section 10 of
8 P.L.1960, c.32 (C.17:22-6.44).

9 [e.] "Member insurer" means an eligible, nonadmitted or surplus
10 lines insurer required to be a member of, and that is subject to,
11 assessments by the fund.

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

22 [g.] Person" means any individual, corporation, partnership,
23 association or voluntary organization.

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

29

30 3. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to read
31 as follows:

32 5. a. The fund shall:

33 (1) Be obligated to the extent of the covered claims against an
34 insolvent insurer incurred prior to or 30 days after the determination
35 of insolvency, or before the policy expiration date, if less than 30 days
36 after that determination, or before the policyholder replaces the policy
37 or causes its cancellation, if he does so within 30 days of the
38 determination. The fund's obligation for covered claims shall not be
39 greater than \$300,000.00 per occurrence, subject to any applicable
40 deductible and self-insured retention contained in the policy. The
41 commissioner may ¹[adjust] pay a portion of¹ or defer the fund's
42 obligations for covered claims based on the moneys available in the
43 fund. In no event shall the fund be obligated to a policyholder or
44 claimant in excess of the limits of liability of the insolvent insurer
45 stated in the policy from which the claim arises. Any obligation of the
46 fund to defend an insured shall cease upon the fund's payment or

- 1 tender of an amount equal to the lesser of the fund's covered claim
2 statutory limit or the applicable policy limit;
- 3 (2) Be deemed the insurer to the extent of its obligation on the
4 covered claims and to such extent shall have all rights, duties, and
5 obligations of the insolvent insurer as if the insurer had not become
6 insolvent;
- 7 (3) Assess member insurers in accordance with section 6 of this act
8 in amounts necessary to pay:
- 9 (a) Obligations of the fund under paragraph (1) of this subsection,
10 (b) Expenses of handling covered claims,
11 (c) Any other expenses incurred in the implementation of the
12 provisions of this act;
- 13 (4) Investigate claims brought against the fund; and adjust,
14 compromise, settle, and pay covered claims to the extent of the fund's
15 obligation; and deny all other claims; and may review settlements,
16 releases and judgments to which the insolvent insurer or its
17 policyholders were parties to determine the extent to which the
18 settlements, releases and judgments may be properly contested;
- 19 (5) Notify those persons as the commissioner directs under section
20 8 of this act;
- 21 (6) Handle claims through the association's employees or
22 representatives, or through one or more insurers or other persons
23 designated as servicing facilities;
- 24 (7) Pay the other expenses of the association in administering the
25 provisions of this act; and
- 26 (8) [Within 60 days of enactment of P.L.2002, c.30
27 (C.17:22-6.70a et al.), transfer to the General Fund any and all moneys
28 in excess of \$40,000,000 in the fund as of June 24, 2002.] (Deleted
29 by amendment, P.L. _____, c. _____.)
- 30 b. The fund may:
- 31 (1) Sue or be sued;
- 32 (2) Negotiate and become a party to those contracts which are
33 necessary to carry out the purpose of this act;
- 34 (3) Perform those other acts which are necessary or appropriate to
35 effectuate the purpose of this act;
- 36 (4) (Deleted by amendment, P.L.2002, c.30.)
- 37 (5) With the approval of the commissioner, borrow and separately
38 account for moneys from any source, including but not limited to the
39 New Jersey Property-Liability Insurance Guaranty Association and the
40 Unsatisfied Claim and Judgment Fund, in such amounts and on such
41 terms as the New Jersey Property-Liability Insurance Guaranty
42 Association may determine are necessary or appropriate to effectuate
43 the purposes of P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance
44 with the association's plan of operation; and
- 45 (6) Make loans, in such amounts and on such terms as the
46 association may determine are necessary or appropriate, to the New

1 Jersey Property-Liability Insurance Guaranty Association in
2 accordance with the provisions of the "New Jersey Property-Liability
3 Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et
4 seq.) and the "Unsatisfied Claim and Judgment Fund Law," P.L.1952,
5 c.174 (C.39:6-61 et seq.).
6 (cf: P.L.2003, c.89, s.81)

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8 4. Section 8 of P.L.1984, c.101 (C.17:22-6.77) is amended to read
9 as follows:

10 8. a. An insolvent insurer shall forward to the commissioner and
11 to the association a copy of the declaration of insolvency within three
12 business days of the date of the determination of the insolvency. A
13 surplus lines insurer shall forward to the fund and commissioner a
14 copy of any complaint seeking an order of liquidation with a finding of
15 insolvency against the insurer at the same time that such complaint is
16 filed with a court of competent jurisdiction.

17 b. The commissioner shall:

18 (1) Order the termination of all in-force policies of an insolvent
19 insurer within 30 days of the date of determination of the insolvency;

20 (2) Upon request, provide the fund with a statement of the net
21 direct written premiums of each member insurer; and

22 (3) ~~Order~~ Require surplus lines agents or the fund to notify[,
23 within five days of the date of the order,] the policyholders of the
24 insolvent insurer and any other interested parties of the determination
25 of insolvency and of their rights under this act. Notification shall be by
26 [mail at their last known address, where available, but if sufficient
27 information for notification by mail is not available, notice by]
28 publication in [a newspaper] newspapers of general circulation [shall
29 be sufficient] as the commissioner shall direct.

30 (cf: P.L.1984, c.207, s.7)

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32 5. Section 9 of P.L.1984, c.101 (C.17:22-6.78) is amended to read
33 as follows:

34 9. a. Any person recovering under this act shall be deemed to have
35 assigned his rights under the policy from which the claim arose to the
36 fund to the extent of his recovery from the fund. Every policyholder
37 or claimant seeking the protection of this act shall cooperate with the
38 fund to the same extent as that person would have been required to
39 cooperate with the insolvent insurer. The fund shall have no cause of
40 action against the policyholder of the insolvent insurer for any sums it
41 has paid out, except for those causes of action as the insolvent insurer
42 would have had if the sums had been paid by the insolvent insurer. In
43 the case of an insolvent insurer operating on a plan with an assessment
44 liability, payments of claims by the fund shall not operate to reduce the
45 liability of policyholders to the receiver, liquidator, or statutory
46 successor for unpaid assessments.

1 b. The receiver, liquidator, or statutory successor of an insolvent
2 insurer shall be bound by settlements of covered claims by the fund or
3 its representatives. The court having jurisdiction shall grant the
4 covered claims paid by the fund priority, against the assets of the
5 insolvent insurer, over any claims against the assets of the insolvent
6 insurer by claimants having received any payment from the fund for the
7 covered claims, to the extent of the amount of the payments made by
8 the fund. The expenses of the fund in handling claims shall be
9 accorded the same priority as the liquidator's expenses.

10 c. The fund shall periodically file with the receiver or liquidator of
11 the insolvent insurer statements of the covered claims paid by the fund
12 and estimates of anticipated claims on the fund, which shall preserve
13 the rights of the fund against the assets of the insolvent insurer.

14 d. The liquidator, receiver, or statutory successor of an insolvent
15 insurer covered by this act shall permit access by the fund or its
16 representative to all of the insolvent insurer's records which would
17 assist the fund in carrying out its functions under this act with regard
18 to covered claims. In addition, the liquidator, receiver or statutory
19 successor shall provide the fund or its representative with copies, or
20 permit copies to be made of the insolvent insurer's records upon
21 request, and at the expense of the fund.

22 e. The fund shall have the right to recover from the following
23 persons the amount of any covered claim paid to or on behalf of such
24 person pursuant to this act:

25 (1) An insured whose net worth on December 31 of the year
26 immediately preceding the date the insurer becomes an insolvent
27 insurer exceeds \$25 million and whose liability obligations to other
28 persons are satisfied in whole or in part by payments made under
29 P.L.1984, c.101 (C.17:22-6.71 et seq.); and

30 (2) Any person who is an affiliate of the insolvent insurer and
31 whose liability obligations to other persons are satisfied in whole or in
32 part by payments made under P.L.1984, c.101 (C.17:22-6.71 et seq.).
33 (cf: P.L.1984, c.101, s. 9)

34
35 6. Section 10 of P.L.1984, c.101 (C.17:22-6.79) is amended to
36 read as follows:

37 10. a. Any person having a covered claim that may be recovered
38 from more than one insurance guaranty association, or its equivalent,
39 shall ~~seek recovery~~ be required to exhaust first ~~from~~ his rights
40 under the statute governing the association of the place of residence
41 of the policyholder at the time of the insured event, except that if it is
42 a first party claim for damage to property with a permanent location,
43 he shall seek recovery first from the association of the jurisdiction in
44 which the property is located. ~~Any recovery under this act shall be~~
45 ~~reduced by the amount of recovery from any other insurance guaranty~~
46 ~~association; except that, if~~ If recovery is denied or deferred by that

1 association, a person may proceed to [recover] seek recovery from
2 any other insurance guaranty association from which recovery may be
3 legally sought.

4 b. Any person having a claim [against an insurer, whether or not
5 the insurer is a member insurer,] under [any provision in] an
6 insurance policy other than a policy of an insolvent insurer [which is
7 also a covered claim], shall be required to exhaust first his right under
8 that other policy. [An amount payable on a covered claim under
9 P.L.1984, c.101 (C.17:22-6.70 et seq.) shall be reduced by the amount
10 of recovery under any such insurance policy.] For purposes of this
11 subsection b., a claim under an insurance policy shall include a claim
12 under any kind of insurance, whether it is a first-party or third-party
13 claim, and shall include without limitation, general liability, accident
14 and health insurance, workers' compensation, health benefits plan
15 coverage, primary and excess coverage, if applicable, and all other
16 private, group or governmental coverages.
17 (cf: P.L.1996, c.156, s.4)

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

36
37 8. This act shall take effect immediately and shall apply to covered
38 claims resulting from insolvencies occurring on or after that date.

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43 _____
Revises the "New Jersey Surplus Lines Insurance Guaranty Fund Act."