

ASSEMBLY, No. 809

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman FARRAGHER

1 AN ACT concerning the New Jersey Property-Liability Insurance  
2 Guaranty Association and the New Jersey Surplus Lines Insurance  
3 Guaranty Fund and amending P.L.1974, c.17 and P.L.1984, c.101.

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

7  
8 1. Section 5 of P.L.1974, c.17 (C.17:30A-5) is amended to read as  
9 follows:

10 5. a. (Deleted by amendment.)

11 b. "Association" means the New Jersey Property-Liability  
12 Insurance Guaranty Association created under section 6;

13 c. "Commissioner" means the Commissioner of Insurance of this  
14 State;

15 d. "Covered claim" means an unpaid claim, including one of  
16 unearned premiums, which arises out of and is within the coverage,  
17 and not in excess of the applicable limits of an insurance policy to  
18 which this act applies, issued by an insurer, if such insurer becomes an  
19 insolvent insurer after January 1, 1974, and (1) the claimant or insured  
20 is a resident of this State at the time of the insured event; or (2) the  
21 property from which the claim arises is permanently located in this  
22 State. "Covered claim" shall not include any amount due any  
23 reinsurer, insurer, insurance pool, or underwriting association, as  
24 subrogation recoveries or otherwise; provided, that a claim for any  
25 such amount, asserted against a person insured under a policy issued  
26 by an insurer which has become an insolvent insurer, which, if it were  
27 not a claim by or for the benefit of a reinsurer, insurer, insurance pool,  
28 or underwriting association, would be a "covered claim," may be filed  
29 directly with the receiver of the insolvent insurer, but in no event may  
30 any such claim be asserted in any legal action against the insured of  
31 such insolvent insurer.

32 A "covered claim" shall not include amounts for interest on

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

**Matter underlined thus is new matter.**

1 unliquidated claims, punitive damages unless covered by the policy,  
2 counsel fees for prosecuting suits for claims against the association,  
3 and assessments or charges for failure of such insolvent insurer to have  
4 expeditiously settled claims. A "covered claim" also shall not include  
5 any first party claim by an insured whose net worth exceeds \$50  
6 million on December 31 of the year prior to the year in which the  
7 insurer becomes an insolvent insurer. An insured's net worth on that  
8 date shall be deemed to include the aggregate net worth of the insured  
9 and all of its subsidiaries as calculated on a consolidated basis;

10 e. "Insolvent insurer" means (1) a licensed insurer admitted  
11 pursuant to R.S.17:32-1 et seq. or authorized pursuant to R.S.17:17-1  
12 et seq., or P.L.1945, c.161 (C.17:50-1 et seq.) to transact the business  
13 of insurance in this State either at the time the policy was issued or  
14 when the insured event occurred, and (2) which is determined to be  
15 insolvent by the court of competent jurisdiction. "Insolvent insurer"  
16 does not include any unauthorized or nonadmitted insurer whether or  
17 not deemed eligible for surplus lines pursuant to P.L.1960, c.32  
18 (C.17:22-6.37 et seq.);

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

26 g. "Net direct written premiums" means direct gross premiums  
27 written in this State on insurance policies to which this act applies, less  
28 return premiums thereon and dividends paid or credited to  
29 policyholders on such direct business. "Net direct written premiums"  
30 does not include premiums on contracts between insurers or  
31 reinsurers, and does not include premiums on policies issued by an  
32 insurer as a member of the New Jersey Insurance Underwriting  
33 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.).  
34 (cf: P.L.1981, c.201, s.3)

35

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

38 8. a. The association shall:

39 (1) Be obligated to the extent of the covered claims against an  
40 insolvent insurer incurred, in the case of private passenger automobile  
41 insurance, prior to or after the determination of insolvency, but before  
42 the policy expiration date or the date upon which the insured replaces  
43 the policy or causes its cancellation, or in the case of insurance other  
44 than private passenger automobile insurance, covered claims against  
45 such insolvent insurer incurred prior to or 90 days after the  
46 determination of insolvency, or before the policy expiration date if less

1 than 90 days after said determination, or before the insured replaces  
2 the policy or causes its cancellation, if he does so within 90 days of the  
3 determination, but such obligation shall [include only that amount of  
4 each covered claim which is less than \$300,000.00 and] not be greater  
5 than \$300,000 per occurrence, subject to any applicable deductible  
6 contained in the policy, except that the \$300,000.00 limitation shall  
7 not apply to a covered claim arising out of insurance coverage  
8 mandated by section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of  
9 benefits payable under subsection a. of section 4 of P.L.1972, c.70  
10 (C.39:6A-4), the association shall be liable for payment of benefits in  
11 an amount not to exceed \$75,000.00. Benefits paid in excess of such  
12 amount shall be recoverable by the association from the Unsatisfied  
13 Claim and Judgment Fund pursuant to the provisions of section 2 of  
14 P.L.1977, c.310 (C.39:6-73.1). In no event shall the association be  
15 obligated to a policyholder or claimant in an amount in excess of the  
16 limits of liability stated in the policy of the insolvent insurer from  
17 which the claim arises;

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

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

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

25 (b) The expenses of handling covered claims;

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

27 (d) Other expenses authorized by this act, excluding expenses  
28 incurred by the association pursuant to paragraphs (9) and (10) of this  
29 subsection.

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

35 Each member insurer shall be notified of the assessment not later  
36 than 30 days before it is due. No member insurer may be assessed  
37 pursuant to this paragraph (3) in any year in an amount greater than  
38 2% of that member insurer's net direct written premiums for the  
39 calendar year preceding the assessment.

40 The association may, subject to the approval of the commissioner,  
41 exempt, abate or defer, in whole or in part, the assessment of any  
42 member insurer, if the assessment would cause the member insurer's  
43 financial statement to reflect amounts of capital or surplus less than  
44 the minimum amounts required for a certificate of authority by any  
45 jurisdiction in which the member insurer is authorized to transact  
46 insurance. In the event an assessment against a member insurer is

1 exempted, abated, or deferred, in whole or in part, because of the  
2 limitations set forth in this section, the amount by which such  
3 assessment is exempted, abated, or deferred shall be assessed against  
4 the other member insurers in a manner consistent with the basis for  
5 assessments set forth in this section. If the maximum assessment,  
6 together with the other assets of the association, does not provide in  
7 any one year an amount sufficient to carry out the responsibilities of  
8 the association, the necessary additional funds shall be assessed as  
9 soon thereafter as it is permitted by this act. Each member insurer  
10 serving as a servicing facility may set off against any assessment,  
11 authorized payments made on covered claims and expenses incurred  
12 in the payment of such claims by such member insurer;

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

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

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

26 (7) Reimburse each servicing facility for obligations of the  
27 association paid by the facility and for expenses incurred by the facility  
28 while handling claims on behalf of the association and shall pay the  
29 other expenses of the association authorized by this act;

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

34 (9) Assess member insurers in amounts necessary to make loans  
35 pursuant to paragraph (10) of this subsection. The estimated  
36 assessments of each member insurer shall be in the proportion that the  
37 net direct written premiums of the member insurer for the calendar  
38 year preceding the assessment bears to the net direct written premiums  
39 of all member insurers for the calendar year preceding the assessment  
40 with actual assessments adjusted in the succeeding year based on the  
41 proportion that the assessed member insurer's net direct written  
42 premiums in the year of assessment bears to the net direct written  
43 premiums of all member insurers for that year. For the purposes of  
44 this paragraph, "net direct written premiums" shall not include medical  
45 malpractice liability insurance premiums paid to member insurers to  
46 which an additional charge has been applied for deposit in the New

1 Jersey Medical Malpractice Reinsurance Recovery Fund as provided  
2 in the "Medical Malpractice Liability Insurance Act," P.L.1975, c.301  
3 (C.17:30D-1 et seq.) and the regulations promulgated pursuant  
4 thereto;

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

10 b. The association may:

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

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

15 (3) Sue or be sued;

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

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

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

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

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

29 3. As used in this act:

30 a. "Association" means the New Jersey Property-Liability  
31 Insurance Guaranty Association created pursuant to P.L.1974, c.17  
32 (C.17:30A-1 et seq.).

33 b. "Covered claim" means an unpaid claim, including a claim for  
34 unearned premiums, which arises out of and is within the coverage,  
35 and not in excess of the applicable limits of an insurance policy to  
36 which this act applies, and which was issued by a surplus lines insurer  
37 which was eligible to transact insurance business in this State at the  
38 time the policy was issued and which has been determined to be an  
39 insolvent insurer on or after June 1, 1984, if (1) the claimant or  
40 policyholder is a resident of this State at the time of the occurrence of  
41 the insured event for which a claim has been made, or (2) the property  
42 from which the claim arises is permanently located in this State.

43 "Covered claim" shall not include any amount due any reinsurer,  
44 insurance pool or underwriting association, as subrogation recoveries  
45 or otherwise, except that a claim for any such amount, asserted against  
46 a person insured under a policy issued by a surplus lines insurer which

1 has become an insolvent insurer, which, if it were not a claim by or for  
2 the benefit of a reinsurer, insurer, insurance pool, or underwriting  
3 association, would be a "covered claim," may be filed directly with the  
4 receiver of the insolvent insurer, but in no event may any such claim  
5 be asserted in any legal action against the insured of that insolvent  
6 insurer. "Covered claim" shall also not include amounts for interest on  
7 unliquidated claims, punitive damages unless covered by the policy,  
8 counsel fees for prosecuting suits for claims against the fund, and  
9 assessments or charges for failure by an insolvent insurer to have  
10 expeditiously settled claims. "Covered claim" also shall not include  
11 any first party claim by an insured whose net worth exceeds \$50  
12 million on December 31 of the year prior to the year in which the  
13 insurer becomes an insolvent insurer. An insured's net worth on that  
14 date shall be deemed to include the aggregate net worth of the insured  
15 and all of its subsidiaries as calculated on a consolidated basis.

16 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty  
17 Fund created pursuant to section 4 of this act.

18 d. "Insolvent insurer" means an insurer which was an eligible  
19 surplus lines insurer at the time the insurance policy was issued or  
20 when the insured event occurred, and which is determined to be  
21 insolvent by a court of competent jurisdiction in this State or the state  
22 or place in which the surplus lines insurer is domiciled. "Insolvent  
23 insurer" does not include an admitted insurer issuing insurance  
24 pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

25 e. "Member insurer" means an eligible, nonadmitted or surplus lines  
26 insurer required to be a member of, and that is subject to, assessments  
27 by the fund.

28 f. "Net direct written premiums" means direct gross premiums on  
29 insurance policies written by a surplus lines insurer to which this act  
30 applies, less return premiums thereon and dividends paid or credited  
31 to policyholders on that direct business. If a policy issued by a surplus  
32 lines insurer covers risks or exposures only partially in this State, the  
33 "net direct written premiums" shall be computed, for assessment  
34 purposes, on that portion of the premium subject to the premium  
35 receipts tax levied in accordance with section 25 of P.L.1960, c.32  
36 (C.17:22-6.59)

37 "Net direct written premiums" do not include premiums on  
38 contracts between insurers or reinsurers.

39 g. "Surplus lines insurer" means a nonadmitted insurer approved as  
40 an eligible, nonadmitted or unauthorized insurer pursuant to section 11  
41 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued  
42 against which a covered claim may be filed in accordance with this act.  
43 (cf: P.L.1987, c.237, s.1)

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45 4. This act shall take effect immediately and shall apply only to  
46 covered claims against insurers which become insolvent on or after

1 that date.

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STATEMENT

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6 The New Jersey Property-Liability Insurance Guaranty Fund  
7 protects insureds against property and casualty insurers that become  
8 insolvent. This bill changes the statutory payment cap on covered  
9 claims from \$300,000 per claim to \$300,000 per occurrence, the same  
10 cap that currently exists for the New Jersey Surplus Lines Insurance  
11 Guaranty Fund.

12 The bill also provides that a first party claim by an insured whose  
13 net worth exceeds \$50 million on December 31 of the year prior to the  
14 year in which the insurer becomes insolvent would not be a claim  
15 which would be covered by the New Jersey Property-Liability  
16 Insurance Guaranty Fund or the New Jersey Surplus Lines Insurance  
17 Guaranty Fund.

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23 Modifies payment cap and definition of covered claim in certain  
insurance guaranty funds.