

ASSEMBLY, No. 1997

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblyman GARRETT

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

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

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

10 8. a. The association shall:

11 (1) Be obligated to the extent of the covered claims against an  
12 insolvent insurer incurred, in the case of private passenger automobile  
13 insurance, prior to or after the determination of insolvency, but before  
14 the policy expiration date or the date upon which the insured replaces  
15 the policy or causes its cancellation, or in the case of insurance other  
16 than private passenger automobile insurance, covered claims against  
17 such insolvent insurer incurred prior to or 90 days after the  
18 determination of insolvency, or before the policy expiration date if less  
19 than 90 days after said determination, or before the insured replaces  
20 the policy or causes its cancellation, if he does so within 90 days of the  
21 determination, but such obligation shall include only that amount of  
22 each covered claim which is less than \$300,000.00 and subject to any  
23 applicable deductible contained in the policy, except that the  
24 \$300,000.00 limitation shall not apply to a covered claim arising out  
25 of insurance coverage mandated by section 4 of P.L.1972, c.70  
26 (C.39:6A-4). In the case of benefits payable under subsection a. of  
27 section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable  
28 for payment of benefits in an amount not to exceed \$75,000.00.  
29 Benefits paid in excess of such amount shall be recoverable by the  
30 association from the Unsatisfied Claim and Judgment Fund pursuant  
31 to the 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 claimant  
33 in an amount in excess of the limits of liability stated in the policy of  
34 the insolvent insurer from which the claim arises;

**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 (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 obligation of the association under paragraph (1) of this  
7 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 may be assessed  
20 pursuant to this paragraph (3) in any year in an amount greater than  
21 2% of that member insurer's net direct written premiums for the  
22 calendar year preceding the assessment.

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

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

1 settlements, releases and judgments may be properly contested;

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

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

9 (7) Reimburse each servicing facility for obligations of the  
10 association paid by the facility and for expenses incurred by the facility  
11 while handling claims on behalf of the association and shall pay the  
12 other expenses of the association authorized by this act;

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

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

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

34 (b) In the event that the commissioner certifies that loans in  
35 amounts less than \$160 million per calendar year as provided in  
36 paragraph (10) of this subsection will satisfy the current and  
37 anticipated financial obligations of the Market Transition Facility,  
38 [without reference to the amount of funds remaining from the sale of  
39 the Market Transition Facility Senior Lien Revenue Bonds,] a member  
40 insurer, and all of its affiliates as defined in subsection a. of section 1  
41 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced  
42 assessment pursuant to this paragraph if the member insurer and all  
43 such affiliates: (i) did not issue or renew a policy of private passenger  
44 automobile insurance in this State on or after January 1, 1973; (ii)  
45 were not assessed as members of the Market Transition Facility as  
46 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii) had

1 not relinquished voluntarily any expectation they may have had for the  
2 repayment of loans made pursuant to paragraph (10) of this  
3 subsection, as provided by paragraph (2) of subsection b. of section 6  
4 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or  
5 settlement agreement approved by any court of competent jurisdiction,  
6 on or before the effective date of this 1995 amendatory act. The  
7 reduced assessment of such members shall be equal to their  
8 proportionate share of the difference between the amount certified by  
9 the commissioner and the total of the assessment of all other insurers  
10 subject to such assessment. If the amount of such difference is zero  
11 or less, the reduced assessment shall be zero;

12 (10) Make loans in the amount of \$160 million per calendar year,  
13 beginning in calendar year 1990, or upon certification by the  
14 commissioner, as provided by paragraph (b) of subsection (9) of this  
15 section, that lesser amounts will satisfy the current and anticipated  
16 financial obligations of the Market Transition Facility, such lesser  
17 amounts as may be collected pursuant to paragraph (9) of this  
18 subsection, to the New Jersey Automobile Insurance Guaranty Fund  
19 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except  
20 that no loan shall be made pursuant to this paragraph after  
21 December 31, 1997. In no event shall member insurers subject to  
22 assessments have their financial obligation increased due to reductions  
23 granted pursuant to paragraph (9) of this subsection.

24 b. The association may:

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

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

29 (3) Sue or be sued;

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

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

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

39 (cf: P.L.1995, c.396, s.1)

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41 2. This act shall take effect immediately.

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#### STATEMENT

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46 This bill modifies the calculation of the reduced assessments of

1 certain insurers for payment of the Market Transition Facility (MTF)  
2 debt as provided by P.L.1995, c.396. That act allows a reduced  
3 assessment for certain insurers only if the Commissioner of Insurance  
4 certifies that loans of less than the statutory amount of \$160 million  
5 per calendar year from the New Jersey Property-Liability Insurance  
6 Guaranty Association (PLIGA) will satisfy the current and anticipated  
7 financial obligations of the MTF, and further provides that this  
8 determination be made "without reference to the amount of funds  
9 remaining from the sale of the Market Transition Facility Senior Lien  
10 Revenue Bonds." This bill eliminates this condition so that these bond  
11 funds can be included by the commissioner when calculating the  
12 amount necessary from the PLIGA loans.

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18 Modifies calculation of reduced assessment of certain insurers for  
payment of MTF debt.