

[First Reprint]  
SENATE, No. 1197

STATE OF NEW JERSEY

INTRODUCED MAY 30, 1996

By Senator KYRILLOS

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. As used in this act:

11 a. (Deleted by amendment.)

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

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SCM committee amendments adopted June 3, 1996.

1 such insolvent insurer.

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

7 A "covered claim" shall not include a claim filed with the  
8 association after the final date set by the court for the filing of claims  
9 against the liquidator or receiver of an insolvent insurer unless the  
10 claimant demonstrates unusual hardship and the commissioner  
11 approves of treatment of the claim as a "covered claim." "Unusual  
12 hardship" shall be defined in regulations promulgated by the  
13 commissioner <sup>1</sup>[to provide protection for claimants who have losses]<sup>1</sup>.  
14 With respect to insurer insolvencies pending as of the effective date of  
15 this 1996 amendatory act, a "covered claim" shall not include a claim  
16 filed with the association: (1) more than one year after the effective  
17 date of this 1996 amendatory act or (2) the date set by the court for  
18 the filing of claims against the liquidator or receiver of the insolvent  
19 insurer, whichever date occurs later;

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

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

36 g. "Net direct written premiums" means direct gross premiums  
37 written in this State on insurance policies to which this act applies, less  
38 return premiums thereon and dividends paid or credited to  
39 policyholders on such direct business. "Net direct written premiums"  
40 does not include premiums on contracts between insurers or  
41 reinsurers, and does not include premiums on policies issued by an  
42 insurer as a member of the New Jersey Insurance Underwriting  
43 Association pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.).

44 (cf: P.L.1981, c.201, s.3)

45

46 2. Section 12 of P.L.1974, c.17 (C.17:30A-12) is amended to read

1 as follows:

2 12. a. Any person having a covered claim which may be recovered  
3 from more than one insurance guaranty association or its equivalent  
4 shall seek recovery first from the association of the place of residence  
5 of the insured at the time of the insured event except that if it is a first  
6 party claim for damage to property with a permanent location, he shall  
7 seek recovery first from the association of the location of the property.  
8 Any recovery under this act shall be reduced by the amount of  
9 recovery from any other insurance guaranty association or its  
10 equivalent. However, if recovery is denied or deferred by the  
11 association, a person may proceed to recover from any other insurance  
12 guaranty association or its equivalent from which recovery may be  
13 legally sought.

14 b. Any person having a claim against an insurer, whether or not the  
15 insurer is a member insurer, under any provision in an insurance policy  
16 other than a policy of an insolvent insurer which is also a covered  
17 claim, shall be required to exhaust first his right under that other  
18 policy. An amount payable on a covered claim under P.L.1974, c.17  
19 (C.17:30A-1 et seq.) shall be reduced by the amount of recovery under  
20 any such insurance policy.  
21 (cf: P.L.1974, c.17, s.12)

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

25 3. As used in this act:

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

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

39 "Covered claim" shall not include any amount due any reinsurer,  
40 insurance pool or underwriting association, as subrogation recoveries  
41 or otherwise, except that a claim for any such amount, asserted against  
42 a person insured under a policy issued by a surplus lines insurer which  
43 has become an insolvent insurer, which, if it were not a claim by or for  
44 the benefit of a reinsurer, insurer, insurance pool, or underwriting  
45 association, would be a "covered claim," may be filed directly with the  
46 receiver of the insolvent insurer, but in no event may any such claim

1 be asserted in any legal action against the insured of that insolvent  
2 insurer. "Covered claim" shall also not include amounts for interest on  
3 unliquidated claims, punitive damages unless covered by the policy,  
4 counsel fees for prosecuting suits for claims against the fund, and  
5 assessments or charges for failure by an insolvent insurer to have  
6 expeditiously settled claims.

7 A "covered claim" shall not include a claim filed with the fund after  
8 the final date set by the court for the filing of claims against the  
9 liquidator or receiver of an insolvent insurer unless the claimant  
10 demonstrates unusual hardship and the commissioner approves of  
11 treatment of the claim as a "covered claim." <sup>1</sup>"Unusual hardship" shall  
12 be defined in regulations promulgated by the commissioner.<sup>1</sup> With  
13 respect to insurer insolvencies pending as of the effective date of this  
14 1996 amendatory act, a "covered claim" shall not include a claim filed  
15 with the fund: (1) more than one year after the effective date of this  
16 1996 amendatory act or (2) the date set by the court for the filing of  
17 claims against the liquidator or receiver of the insolvent insurer,  
18 whichever date occurs later.

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

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

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

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

40 "Net direct written premiums" do not include premiums on  
41 contracts between insurers or reinsurers.

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

1       4. Section 10 of P.L.1984, c.101 (C.17:22-6.79) is amended to  
2 read as follows:

3       10. a. Any person having a covered claim that may be recovered  
4 from more than one insurance guaranty association, or its equivalent,  
5 shall seek recovery first from the association of the place of residence  
6 of the policyholder at the time of the insured event, except that if it is  
7 a first party claim for damage to property with a permanent location,  
8 he shall seek recovery first from the association of the jurisdiction in  
9 which the property is located. Any recovery under this act shall be  
10 reduced by the amount of recovery from any other insurance guaranty  
11 association; except that, if recovery is denied or deferred by that  
12 association, a person may proceed to recover from any other insurance  
13 guaranty association from which recovery may be legally sought.

14       b. Any person having a claim against an insurer, whether or not the  
15 insurer is a member insurer, under any provision in an insurance policy  
16 other than a policy of an insolvent insurer which is also a covered  
17 claim, shall be required to exhaust first his right under that other  
18 policy. An amount payable on a covered claim under P.L.1984, c.101  
19 (C.17:22-6.70 et seq.) shall be reduced by the amount of recovery  
20 under any such insurance policy.  
21 (cf: P.L.1984, c.101, s.10)

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23       5. This act shall take effect immediately and shall apply to all  
24 pending unpaid claims and all claims filed on or after the effective date  
25 of this act.

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30 Establishes bar date for filing claims and requires exhaustion of other  
31 policies in regard to claims against certain insurance guaranty funds.