

P.L. 2022, CHAPTER 98, *approved August 12, 2022*
Senate, No. 2422 (*First Reprint*)

1 AN ACT concerning the “New Jersey Life and Health Insurance
2 Guaranty Association Act” and amending P.L.1991, c.208.

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.1991, c.208 (C.17B:32A-2) is amended to
8 read as follows:

9 2. a. The purpose of **[this act]** P.L.1991, c.208 (C.17B:32A-1
10 et seq.) is to protect, subject to certain limitations, those persons
11 specified in subsection a. of section 3 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-1 et seq.) from hardship because of the impairment or
13 insolvency of any member insurer that issued the life **[and]**, health
14 **[insurance policies]**, and annuity policies, plans or contracts
15 specified in subsection b. of section 3 of **[this act]** P.L.1991, c.208
16 (C.17B:32A-1 et seq.).

17 b. To provide this protection, an association of member
18 insurers is created to pay benefits and to continue coverages, as
19 limited by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), and
20 members of the association are subject to assessment to provide
21 funds to carry out the purposes of **[this act]** P.L.1991, c.208
22 (C.17B:32A-1 et seq.).
23 (cf: P.L.1991, c.208, s.2)
24

25 2. Section 3 of P.L.1991, c.208 (C.17B:32A-3) is amended to
26 read as follows:

27 3. a. **[This act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall
28 provide coverage, for the policies and contracts specified in subsection
29 b. of this section, to:

30 (1) persons who, regardless of where they reside (except for
31 nonresident certificate holders under group policies or contracts), are
32 the beneficiaries, assignees or payees, including health care providers
33 rendering services covered under health insurance policies or
34 certificates, of the persons covered under paragraph (2) of this
35 subsection; and

36 (2) persons who are owners of or certificate holders or enrollees
37 under those policies or contracts**[, or in the case of]** (other than
38 unallocated annuity contracts, [to the persons who are the contract
39 holders and] and structured settlement annuities) and in each case
40 who:

41 (a) are residents, or

42 (b) are not residents, but only if:

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:

¹Assembly floor amendments adopted June 29, 2022.

- 1 (i) the member insurers which issued the policies or contracts are
2 domiciled in this State;
- 3 (ii) those member insurers, health service corporations, hospital
4 service corporations, medical service corporations, or health
5 maintenance organizations never held a license or certificate of
6 authority in the states in which those persons reside;
- 7 (iii) those states have associations and coverage provisions with
8 respect to residency similar to the association created by **[this act]**
9 P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 10 (iv) those persons are not eligible for coverage by those
11 associations.
- 12 (3) For unallocated annuity contracts specified in subsection b. of
13 this section, paragraphs (1) and (2) of this subsection shall not apply,
14 and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in
15 paragraphs (5) and (6) of this subsection) provide coverage to persons
16 who are the owners of the unallocated annuity contracts:
- 17 (a) if the contracts are issued to or in connection with a specific
18 benefit plan whose plan sponsor has its principal place of business in
19 this State; and
- 20 (b) issued to or in connection with government lotteries if the
21 owners are residents.
- 22 (4) For structured settlement annuities specified in subsection b. of
23 this section, paragraphs (1) and (2) of this subsection shall not apply,
24 and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in
25 paragraphs (5) and (6) of this subsection) provide coverage to a person
26 who is a payee under a structured settlement annuity (or beneficiary of
27 a payee if the payee is deceased) if the payee:
- 28 (a) is a resident, regardless of where the contract owner resides; or
29 (b) is not a resident, but only under both of the following
30 conditions:
- 31 (i) the contract owner of the structured settlement annuity is a
32 resident or is not a resident but the insurer that issued the settlement
33 annuity is domiciled in New Jersey and the state in which the contract
34 owner resides has an association similar to the association created by
35 P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 36 (ii) the payee (or beneficiary) and the contract owner are not
37 eligible for coverage by the association of the state in which the payee
38 or contract owner resides.
- 39 (5) P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
40 coverage to a person:
- 41 (a) who is a payee (or beneficiary) of a contract owner resident of
42 this State, if the payee (or beneficiary) is afforded any coverage by the
43 association of another state;
- 44 (b) covered under paragraph (3) of this subsection, if any coverage
45 is provided by the association of another state to the person; or
- 46 (c) who acquires rights to receive payments through a structured
47 settlement factoring transaction as defined in section 5891 of the
48 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless

1 of whether the transaction occurred before or after that section became
2 effective.

3 (6) P.L.1991, c.208 (C.17B:32A-1 et seq.) is intended to provide
4 coverage to a person who is a resident of this State and, in special
5 circumstances, to a nonresident. In order to avoid duplicate coverage,
6 if a person who would otherwise receive coverage under P.L.1991,
7 c.208 (C.17B:32A-1 et seq.) is provided coverage under the law of
8 another state, the person shall not be provided coverage under
9 P.L.1991, c.208 (C.17B:32A-1 et seq.). In determining the application
10 of the provisions of this paragraph in situations where a person could
11 be covered by the association of more than one state, whether as an
12 owner, payee, enrollee, beneficiary or assignee, P.L.1991, c.208
13 (C.17B:32A-1 et seq.) shall be construed in conjunction with other
14 state laws to result in coverage by only one association.

15 b. **【This act】** P.L.1991, c.208 (C.17B:32A-1 et seq.) shall provide
16 coverage to the persons specified in subsection a. of this section for
17 policies or contracts of:

18 (1) direct, non-group life insurance, health insurance (which for
19 the purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.) includes health
20 service corporation contracts, hospital service corporation contracts,
21 medical service corporation contracts, and health maintenance
22 organization subscriber contracts and certificates), or **【annuity】**
23 annuities and supplemental policies or contracts, for certificates under
24 direct group life insurance, health insurance, **【annuity】** annuities and
25 supplemental policies and contracts, for individual and group long-
26 term care insurance policies and contracts, and for unallocated annuity
27 contracts, issued by member insurers, except as limited by **【this act】**
28 P.L.1991, c.208 (C.17B:32A-1 et seq.); and

29 (2) policies or contracts issued by medical service corporations
30 declared to be insolvent or impaired by a court of competent
31 jurisdiction on or after September 1, 1987, but prior to the effective
32 date of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), except as
33 otherwise limited by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

34 c. **【This act】** Except as otherwise provided in subsection d. of
35 this section, P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide
36 coverage for:

37 (1) any portion of a policy or contract not guaranteed by the
38 member insurer, or under which the risk is borne by the policy or
39 contract **【holder】** owner;

40 (2) any policy or contract of reinsurance, unless assumption
41 certificates have been issued;

42 (3) any portion of a policy or contract to the extent that the rate of
43 interest on which it is based:

44 (a) averaged over the four-year period prior to the date on which
45 the association becomes obligated with respect to that policy or
46 contract, exceeds the lesser of:

- 1 (i) the rate of interest determined by subtracting three percentage
2 points from Moody's Corporate Bond Yield Average averaged for that
3 same four-year period, or for such lesser period if the policy or
4 contract was issued less than four years before the association became
5 obligated, or
- 6 (ii) the rate of interest specified in the standard valuation law, or
7 the rules of this State for determining the minimum standard for the
8 valuation of policies or contracts issued during the year of insolvency;
9 and
- 10 (b) on and after the date on which the association becomes
11 obligated with respect to that policy or contract, exceeds the rate of
12 interest determined by subtracting four percentage points from
13 Moody's Corporate Bond Yield Average as most recently available;
14 except that the limitation of this paragraph shall not preclude the
15 association from providing more extensive coverage if it is proceeding
16 under the authority of section 7 of **[this act]** P.L.1991, c.208
17 (C.17B:32A-7);
- 18 (4) any plan or program of an employer, association or similar
19 entity to provide life, health, or annuity benefits to its employees or
20 members to the extent that such plan or program is self-funded or
21 uninsured, including, but not limited to, benefits payable by an
22 employer, association or similar entity under:
- 23 (a) a Multiple Employer Welfare Arrangement as defined in the
24 Employee Retirement Income Security Act of 1974 (29 U.S.C.
25 s.1002);
- 26 (b) a minimum premium group insurance plan;
- 27 (c) a stop-loss group insurance plan; or
- 28 (d) an administrative services only contract;
- 29 (5) any portion of a policy or contract to the extent that it provides
30 dividends or experience rating credits, or provides that any fees or
31 allowances be paid to any person, including the **[holder]** owner of the
32 policy or contract, in connection with the service to or administration
33 of that policy or contract;
- 34 (6) any policy or contract issued in this State by a member insurer
35 at a time when it was not licensed or did not have a certificate of
36 authority to issue that policy or contract in this State;
- 37 (7) any unallocated annuity contract issued to an employee benefit
38 plan covered by the Pension Benefit Guaranty Corporation and whose
39 benefits will be paid under such system; **[and]**
- 40 (8) any portion of any unallocated annuity contract which is not
41 issued to or in connection with a specific plan providing benefits to
42 employees or an association of natural persons;
- 43 (9) a portion of a policy or contract to the extent it provides for
44 interest or other changes in value to be determined by the use of an
45 index or other external reference stated in the policy or contract, but
46 which has not been credited to the policy or contract, or as to which
47 the policy or contract owner's rights are subject to forfeiture, as of the
48 date the member insurer becomes an impaired or insolvent insurer

1 under P.L.1991, c.208 (C.17B:32A-1 et seq.), whichever is earlier. If a
2 policy or contract's interest or changes in value are credited less
3 frequently than annually, then for purposes of determining the values
4 that have been credited and are not subject to forfeiture under this
5 paragraph, the interest or change in value determined by using the
6 procedures defined in the policy or contract shall be credited as if the
7 contractual date of crediting interest or changing values was the date
8 of impairment or insolvency, whichever is earlier, and shall not be
9 subject to forfeiture;

10 (10) a policy or contract providing any hospital, medical,
11 prescription drug, or other health care benefits pursuant to Medicare
12 Parts C or D or the Medicaid program, 42 U.S.C. ss.1396 et seq.,
13 including the Children's Health Insurance Program (CHIP) which
14 provides health coverage to eligible children, either through Medicaid
15 or separate CHIP programs, or any regulations issued pursuant thereto,
16 or the "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:40J-
17 8 et seq.), or

18 (11) structured settlement annuity benefits to which a payee (or
19 beneficiary) has transferred rights in a structured settlement factoring
20 transaction as defined pursuant to section 5891 of the federal Internal
21 Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless of whether the
22 transaction occurred before or after that section became effective.

23 d. The exclusion from coverage referenced in paragraph (3) of
24 subsection c. of this section shall not apply to any portion of a policy
25 or contract, including a rider, that provides a long-term care or any
26 other health insurance benefits.

27 e. The benefits for which the association may become liable shall
28 in no event exceed the lesser of:

29 (1) the contractual obligations for which the member insurer is
30 liable or would have been liable if it were not an impaired or insolvent
31 insurer; or

32 (2) with respect to **any** one **insured individual** life, regardless
33 of the number of policies or contracts:

34 (a) \$500,000 in life insurance death benefits, but not more than
35 \$100,000 in net cash surrender and net cash withdrawal values for life
36 insurance;

37 (b) \$500,000 in present value annuity benefits, including net cash
38 surrender and net cash withdrawal values, but not more than \$100,000
39 in net cash surrender and net cash withdrawal values for annuity
40 benefits; provided, however, that in no event shall the association be
41 liable to expend more than \$500,000 in the aggregate with respect to
42 any one individual under this paragraph (2); or

43 (3) with respect to any one unallocated annuity contract,
44 \$2,000,000 in benefits; or

45 (4) with respect to any one group, blanket, or individual accident
46 or health insurance or **group, blanket or individual accident or health**
47 **insurance policy, unlimited benefits** ¹or health benefit plan, policy
48 or contract:

1 (a) \$500,000 for coverages not defined as disability income
2 insurance, health benefit plans, or long-term care insurance, including
3 any net cash surrender and net cash withdrawal values;

4 (b) \$500,000 for disability income insurance and long-term care
5 insurance; provided, however, that in no event shall the association be
6 liable to expend more than \$500,000 in the aggregate with respect to
7 any one individual under this paragraph; and

8 (c) \$500,000 for health benefit plans; provided, however, that in
9 no event shall the association be liable to expend more than \$500,000
10 in the aggregate with respect to any one individual under this
11 paragraph] group, blanket or individual accident or health insurance
12 policy, unlimited benefits¹;

13 (5) with respect to each individual participating in a governmental
14 retirement benefit plan established under sections 401, 403(b), or 457
15 of the U.S. Internal Revenue Code, 26 U.S.C. ss.401, 403(b), and 457,
16 covered by an unallocated annuity contract or the beneficiaries of each
17 such individual if deceased, in the aggregate, \$500,000 in present
18 value annuity benefits, including net cash surrender and net cash
19 withdrawal values; and

20 (6) with respect to each payee of a structured settlement annuity
21 (or beneficiary or beneficiaries of the payee if deceased), \$500,000 in
22 present value annuity benefits, in the aggregate, including net cash
23 surrender and net cash withdrawal values, if any.

24 (7) The limitations set forth in this subsection are limitations on
25 the benefits for which the association is obligated before taking into
26 account either its subrogation and assignment rights or the extent to
27 which those benefits could be provided out of the assets of the
28 impaired or insolvent insurer attributable to covered policies. The costs
29 of the obligation of the association under P.L.1991, c.208 (C.17B:32A-
30 1 et seq.) may be met by the use of assets attributable to covered
31 policies or reimbursed to the association pursuant to its subrogation
32 and assignment rights.

33 ¹[(8) For purposes of P.L.1991, c.208 (C.17B:32A-1 et seq.),
34 benefits provided by a long-term care rider to a life insurance policy or
35 annuity contract shall be considered the same type of benefits as the
36 base life insurance policy or annuity contract to which it relates.

37 (9) Dollar amounts allotted by the association under this section
38 shall increase or decrease based upon changes in the health care costs
39 component of the consumer price index from January 1, 2022, to the
40 date on which the member insurer becomes an insolvent insurer.]¹

41 [e.] f. A provider of health care services, in order to receive
42 payment directly from the association upon a claim of the provider
43 against an insured or enrollee, shall agree to forgive the insured of
44 20% of the obligation which would otherwise be paid by the member
45 insurer had it not been insolvent. The obligations of solvent member
46 insurers to pay all or part of the covered claim are not diminished by
47 the forgiveness provided in this subsection. The association is not

1 bound by an assignment of benefits executed with respect to the
2 coverage provided by the insolvent insurer. The association may
3 aggregate all claims owed health care providers when negotiating
4 direct payment of claims of all covered individuals.

5 (cf: P.L.1991, c.208, s.3)

6
7 3. Section 4 of P.L.1991, c.208 (C.17B:32A-4) is amended to
8 read as follows:

9 4. As used in **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):

10 "Account" means either of the two accounts created under
11 subsection b. of section 5 of **[this act]** P.L.1991, c.208
12 (C.17B:32A-5).

13 "Association" means the New Jersey Life and Health Insurance
14 Guaranty Association created in subsection a. of section 5 of **[this**
15 **act]** P.L.1991, c.208 (C.17B:32A-5).

16 "Benefit plan" means the benefit plan of a specific employee,
17 union or association of natural persons.

18 "Called assessment" or "called" when used in the context of
19 assessments means that a notice has been issued by the association
20 to member insurers requiring that an authorized assessment be paid
21 within the timeframe set forth within the notice. An authorized
22 assessment becomes a called assessment when notice is mailed by
23 the association to member insurers.

24 "Commissioner" means the Commissioner of Banking and
25 Insurance.

26 "Contractual obligation" means any obligation under a policy or
27 contract or certificate under a group policy or contract, or portion
28 thereof, for which coverage is provided under section 3 of **[this act]**
29 P.L.1991, c.208 (C.17B:32A-3), but does not include unearned
30 premium under a health insurance policy or contract.

31 "Covered policy" or "covered contract" means any policy or
32 contract within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-
33 1 et seq.) as provided by section 3 of **[this act]** P.L.1991, c.208
34 (C.17B:32A-3).

35 "Department" means the Department of Banking and Insurance.

36 "Health benefit plan" means any hospital or medical expense
37 policy or certificate, health service corporation contract, hospital
38 service corporation contract, medical service corporation contract,
39 health maintenance organization subscriber contract, or any other
40 similar health contract. "Health benefit plan" does not include
41 accident-only insurance; credit insurance; dental-only insurance;
42 vision-only insurance; Medicare Supplement income; benefits for
43 long-term care, home health care, community-based care, or any
44 combination thereof; liability insurance, including general liability
45 insurance, or coverage issued as a supplement to liability insurance;
46 disability income insurance; coverage for on-site medical clinics; or
47 specified disease, hospital, confinement indemnity, or limited

1 benefit health insurance if the types of coverage do not provide
2 coordination of benefits and are provided under separate policies or
3 certificates.

4 "Impaired insurer" means a member insurer which, after the
5 effective date of **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):
6 (1) is determined by the commissioner to be potentially unable to
7 fulfill its contractual obligations; or (2) is placed under an order of
8 receivership, rehabilitation or conservation by a court of competent
9 jurisdiction.

10 "Insolvent insurer" means a member insurer which, after the
11 effective date of **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.),
12 is placed under an order of liquidation by a court of competent
13 jurisdiction with a finding of insolvency.

14 "Member insurer" means any insurer, health service corporation,
15 hospital service corporation, medical service corporation, or health
16 maintenance organization licensed in this State or which holds a
17 certificate of authority to transact any kind of insurance, health
18 service corporation business, hospital service corporation business,
19 medical service corporation business, or health maintenance
20 organization business in this State for which coverage is provided
21 under section 3 of **[this act]** P.L.1991, c.208 (C.17B:32A-3), and
22 includes any insurer, health service corporation, hospital service
23 corporation, medical service corporation, or health maintenance
24 organization whose license or certificate of authority in this State
25 may have been suspended, revoked, not renewed or voluntarily
26 withdrawn, but does not include:

27 (1) A dental service corporation established pursuant to the
28 provisions of P.L.1968, c.305 (C.17:48C-1 et seq.);

29 (2) A dental plan organization established pursuant to the
30 provisions of P.L.1979, c.478 (C.17:48D-1 et seq.);

31 (3) **[A health maintenance organization established pursuant to**
32 **the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.);]** (Deleted by
33 amendment, P.L. , c.) (pending before the Legislature as this
34 bill);

35 (4) A fraternal benefit society established pursuant to the
36 provisions of P.L.1959, c.167 (C.17:44A-1 et seq.);

37 (5) A mandatory state pooling plan;

38 (6) A mutual assessment company or any entity that operates on
39 an assessment basis to the extent of the assessment liability of its
40 members;

41 (7) An insurance exchange; **[or]**

42 (8) A licensed organized delivery system licensed pursuant to
43 P.L.1999, c.409 (C.17:48H-1 et seq.);

44 (9) A captive insurer, established pursuant to P.L.2011, c.25
45 (C.17:47B-1 et seq.); or

46 **[(8)] (10)** An entity similar to any of the above.

1 "Moody's Corporate Bond Yield Average" means the Monthly
2 Average Corporates as published by Moody's Investors Service,
3 Inc., or any successor thereto.

4 "Owner" of a policy or contract and "policyholder," "policy
5 owner," and "contract owner" means the person who is identified as
6 the legal owner under the terms of the policy or contract or who is
7 otherwise vested with legal title to the policy or contract through a
8 valid assignment completed in accordance with the terms of the
9 policy or contract and properly recorded as the owner of the books
10 of the member insurer. The terms owner, contract owner,
11 policyholder, and policy owner do not include persons with a mere
12 beneficial interest in a policy or contract.

13 "Person" means an individual or natural person, corporation,
14 partnership, association or voluntary organization.

15 "Plan sponsor" means:

16 (1) the employer in the case of a benefit plan established or
17 maintained by a single employer;

18 (2) the employee organization in the case of a benefit plan
19 established or maintained by an employee organization; or

20 (3) in a case of a benefit plan established or maintained by two
21 or more employers or jointly by one or more employers and one or
22 more employee organizations, the association, committee, joint
23 board of trustees, or other similar group of representatives of the
24 parties who establish or maintain the benefit plan.

25 "Premiums" means amounts or considerations received in any
26 calendar year on covered policies or contracts less premiums,
27 considerations and deposits returned thereon, and less dividends and
28 experience credits thereon. "Premiums" shall not include any
29 amounts or considerations received for any policies or contracts or
30 for the portions of any policies or contracts for which coverage is
31 not provided under subsection b. of section 3 of **[this act]**
32 P.L.1991, c.208 (C.17B:32A-3) except that assessable premium
33 shall not be reduced as the result of the application of: paragraph
34 (3) of subsection c. of section 3 relating to interest limitations; or
35 paragraph (2) of subsection d. of section 3 relating to limitations
36 with respect to any one insured or enrolled individual. "Premiums"
37 shall not include any premiums in excess of \$2,000,000 per contract
38 on any unallocated annuity contract.

39 "Resident" means a person who resides in this State at the time a
40 member insurer is an impaired insurer or insolvent insurer and to
41 whom a contractual obligation is owed. For the purposes of **[this**
42 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), a person may be a
43 resident of only one state, which in the case of a person other than a
44 natural person shall be its principal place of business. A citizen of
45 the United States that is a resident of a foreign country or of a
46 United States possession, territory, or protectorate that does not
47 have an association similar to the association created by P.L.1991,
48 c.208 (C.17B:32A-1 et seq.) shall be deemed a resident of the state

1 of domicile of the member insurer that issued the policies or
2 contracts.

3 “State” means a state, the District of Columbia, Puerto Rico, and
4 a United States possession, territory, or protectorate.

5 “Structured settlement annuity” means an annuity purchased in
6 order to fund periodic payments for a plaintiff or other claimant in
7 payment for or with respect to personal injury suffered by the
8 plaintiff or other claimant.

9 "Supplemental contract" means an agreement entered into for the
10 distribution of policy or contract proceeds.

11 "Unallocated annuity contract" means: (1) an annuity contract or
12 group annuity certificate which is not issued to and owned by an
13 individual, except to the extent of any annuity benefits guaranteed
14 to an individual by an insurer under that contract or certificate; or
15 (2) any unallocated life insurance or health insurance funding
16 agreement, where insurance certificates or contracts are not issued
17 to and owned by individuals, except to the extent of any life
18 insurance or health insurance benefits guaranteed to an individual
19 by an insurer under such funding agreement.

20 (cf: P.L.1991, c.208, s.4)

21

22 4. Section 5 of P.L.1991, c.208 (C.17B:32A-5) is amended to
23 read as follows:

24 5. a. There is created a nonprofit legal entity to be known as
25 the New Jersey Life and Health Insurance Guaranty Association.
26 All member insurers shall be and remain members of the
27 association as a condition of their authority or license to transact
28 insurance, health service corporation business, hospital service
29 corporation business, medical service corporation business, or
30 health maintenance organization business in this State. Any
31 member insurer shall remain a member insurer for four years after it
32 ceases to hold a certificate of authority or license. The association
33 shall perform its functions under the plan of operation established
34 and approved pursuant to section 9 of **[this act]** P.L.1991, c.208
35 (C.17B:32A-9) and shall exercise its powers through the board of
36 directors established under section 6 of **[this act]** P.L.1991, c.208
37 (C.17B:32A-6). The association shall be under the immediate
38 supervision of the commissioner and shall be subject to the
39 applicable provisions of the insurance laws of this State. Meetings
40 or records of the association may be opened to the public upon
41 majority vote of the board of directors of the association.

42 b. For purposes of administration and assessment the association
43 shall maintain two accounts:

44 (1) The life insurance and annuity account which shall include
45 the following subaccounts:

46 (a) life insurance subaccount;

47 (b) annuity subaccount; and

48 (c) unallocated annuity subaccount.

1 (2) The health **[insurance]** account.

2 (cf: P.L.1991, c.208, s.5)

3

4 5. Section 6 of P.L.1991, c.208 (C.17B:32A-6) is amended to
5 read as follows:

6 6. a. There shall be a board of directors of the association
7 which shall consist of not less than **[five]** seven nor more than
8 **[nine]** eleven member insurers serving terms as established in the
9 plan of operation. The members of the board shall be selected by
10 member insurers subject to the approval of the commissioner.
11 Vacancies on the board shall be filled for the remaining period of
12 the term by a majority vote of the remaining board members,
13 subject to the approval of the commissioner. To select the initial
14 board of directors, and initially organize the association, the
15 commissioner shall give notice to all member insurers of the time
16 and place of the organizational meeting. In determining voting
17 rights at the organizational meeting each member insurer shall be
18 entitled to one vote in person or by proxy. If the board of directors
19 is not selected within 60 days after notice of the organizational
20 meeting, the commissioner may appoint the initial members.

21 b. In approving selections or appointing members to the board,
22 the commissioner shall consider, among other things, whether all
23 member insurers are fairly represented.

24 c. Members of the board may be reimbursed from the assets of
25 the association for reasonable expenses incurred by them as
26 members of the board of directors, but members of the board shall
27 not otherwise be compensated by the association for their services.

28 (cf: P.L.1991, c.208, s.6)

29

30 6. Section 7 of P.L.1991, c.208 (C.17B:32A-7) is amended to
31 read as follows:

32 7. a. If a member insurer is an impaired **[domestic]** insurer,
33 the association may, in its discretion, and subject to any conditions
34 imposed by the association that do not unreasonably impair the
35 contractual obligations of the impaired insurer, that are approved by
36 the commissioner~~],~~ and that are, except in cases of court ordered
37 receivership, conservation or rehabilitation, also approved by the
38 impaired insurer~~]~~:

39 (1) guaranty, assume, reissue, or reinsure, or cause to be
40 guaranteed, assumed, reissued, or reinsured, any or all of the
41 policies or contracts of the impaired insurer;

42 (2) provide such monies, pledges, notes, guarantees, or other
43 means as are proper to effectuate the provisions of paragraph (1) of
44 this subsection and assure payment of the contractual obligations of
45 the impaired insurer pending action under paragraph (1); or

46 (3) loan money to the impaired insurer.

1 b. [(1) If a member insurer is an impaired insurer, whether
2 domestic, foreign or alien, and the insurer is not paying claims in a
3 timely manner, then subject to the preconditions specified in
4 paragraph (2) of this subsection, the association shall, in its
5 discretion, either:

6 (a) take any of the actions specified in subsection a. of this
7 section, subject to the conditions therein; or

8 (b) provide substitute benefits in lieu of the contractual
9 obligations of the impaired insurer solely for health insurance
10 claims, periodic annuity benefit payments, death benefits,
11 supplemental benefits, and cash withdrawals for policy or contract
12 owners who petition therefor under claims of emergency or
13 hardship in accordance with standards proposed by the association
14 and approved by the commissioner.

15 (2) The association shall be subject to the requirements of
16 paragraph (1) of this subsection only if:

17 (a) the laws of the impaired insurer's state or country of
18 domicile provide that, until all payments of, or on account of, the
19 impaired insurer's contractual obligations by all guaranty
20 associations, along with all expenses thereof and interest on all such
21 payments and expenses, shall have been repaid to the guaranty
22 associations or a plan of repayment by the impaired insurer shall
23 have been approved by the guaranty associations,

24 (i) the delinquency proceeding shall not be dismissed,

25 (ii) neither the impaired insurer nor its assets shall be returned to
26 the control of its shareholders or private management, and

27 (iii) it shall not be permitted to solicit or accept new business or
28 have any suspended or revoked license restored; and

29 (b) (i) in the case of a domestic insurer, it has been placed
30 under an order of receivership or rehabilitation by a court of
31 competent jurisdiction in this State, or

32 (ii) in the case of a foreign or alien insurer, it has been prohibited
33 from soliciting or accepting new contracts in this State, except as
34 approved by the commissioner and as part of a plan of rehabilitation
35 approved by a court of competent jurisdiction.

36 (3) (a) The limitations of paragraphs (3) and (4) of subsection c.
37 of section 3 of this act shall not preclude the association from
38 providing more extensive coverage or guarantees, if it is proceeding
39 under the authority of this section and if that additional coverage is
40 an essential element in allowing a rehabilitation plan to succeed as
41 determined by the commissioner and a court of competent
42 jurisdiction.

43 (b) The commissioner and the association shall utilize the
44 authority of this section if a reasonable prospect exists that the
45 ultimate liabilities to be paid by the association and its member
46 insurers will be reduced as compared to the present liabilities
47 incurred if the association were to proceed under paragraph (2) of
48 subsection d. of section 3 of this act.

1 (c) In proceeding under paragraph (1) of subsection b. of this
2 section, without limitation on any authority or right of the
3 association under this act or any right of contract, the association
4 may enter into agreements with other guaranty associations to
5 secure coordination between associations and performance by those
6 associations with respect to policy or contract holders covered by
7 those associations equivalent to that provided to individuals covered
8 by this act.

9 (d) In proceeding under paragraph (1) of subsection b. of this
10 section, any funds actually expended by a member insurer for
11 benefits received by a person covered by this act, which were
12 subject to a plan of rehabilitation approved by the commissioner
13 and a court of competent jurisdiction, shall qualify as an assessment
14 under section 8 of this act after a final accounting.

15 (e) When the association is proceeding under paragraph (1) of
16 subsection b. of this section, the court shall authorize the
17 establishment of liens upon policy and contract holder cash
18 surrender values and cash withdrawal values limiting the ability of
19 policy and contract holders to withdraw deposits, surrender their
20 policies or contracts and receive the net cash surrender values and
21 net cash withdrawal values, for a term of not less than three nor
22 more than five years. The court, in establishing liens upon cash
23 surrender values or cash withdrawal values, shall approve such liens
24 upon the motion of the receiver as are necessary to enable the
25 impaired insurer to meet its death and disability claims and fund the
26 necessary operating expenses associated with its receivership to the
27 greatest extent possible with the available assets of the impaired
28 insurer within the time period covered by rehabilitation plan. The
29 standard to be applied by the court with respect to preferential
30 treatment is that all options offered to policy and contract holders
31 must represent the same pro rata claim on the general account assets
32 of the impaired insurer and be actuarially equivalent in present
33 value terms at the time they are approved.】 (Deleted by
34 amendment, P.L. , c.) (pending before the Legislature as this
35 bill);

36 c. If a member insurer is an insolvent insurer, the association
37 shall, in its discretion, either:

38 (1) (a) guaranty, assume, reissue, or reinsure, or cause to be
39 guaranteed, assumed, reissued, or reinsured, the policies or
40 contracts of the insolvent insurer; or

41 (b) assure payment of the contractual obligations of the
42 insolvent insurer; and

43 (c) provide those monies, pledges, guarantees, or other means as
44 are reasonably necessary to discharge those obligations; or

45 (2) with respect only to **【life and health insurance】** policies or
46 contracts, provide benefits and coverages in accordance with
47 subsection d. of this section.

1 d. When proceeding under **【**subparagraph (b) of paragraph (1)
2 of subsection b. or**】** paragraph (2) of subsection c. of this section,
3 the association shall, with respect only to **【**life and health
4 insurance**】** policies or contracts:

5 (1) assure payment of benefits **【**for premiums identical to the
6 premiums and benefits, except for terms of conversion and
7 renewability,**】** that would have been payable under the policies or
8 contracts of the impaired or insolvent insurer, for claims incurred:

9 (a) with respect to group policies or contracts, not later than the
10 earlier of the next renewal date under those policies or contracts or
11 45 days, but in no event less than 30 days, after the date on which
12 the association becomes obligated with respect to those policies or
13 contracts;

14 (b) with respect to individual policies or contracts, not later than
15 the earlier of the next renewal date, if any, under those policies or
16 contracts or one year, but in no event less than 30 days, from the
17 date on which the association becomes obligated with respect to
18 those policies or contracts;

19 (2) make a diligent effort to provide all known insureds,
20 enrollees, annuitants, or group **【**policyholders**】** policy or contract
21 owners with respect to group policies or contracts, 30 days' notice
22 of the termination of the benefits provided; and

23 (3) with respect to individual policies or contracts, and with
24 respect to individuals formerly an insured, enrollee, or annuitant
25 under group policies or contracts who are not eligible for
26 replacement group coverage, make available to each known insured,
27 enrollee, annuitant, or policy or contract owner of an individual
28 policy or contract if other than the insured, enrollee, or annuitant
29 substitute coverage on an individual basis in accordance with the
30 provisions of paragraph (4) of this subsection, if the insured,
31 enrollee, or annuitant had a right under law or the terminated policy
32 **【**or**】**, contract or annuity to convert coverage to individual coverage
33 or to continue an individual policy **【**or**】**, contract, or annuity in
34 force until a specified age or for a specified time, during which the
35 member insurer, health service corporation, hospital service
36 corporation, medical service corporation, or health maintenance
37 organization had no right unilaterally to make changes in any
38 provision of the policy **【**or**】**, contract, or annuity or had a right only
39 to make changes in premium by class.

40 (4) (a) In providing the substitute coverage required by
41 paragraph (3), the association may offer either to reissue the
42 terminated coverage or to issue an alternative policy or contract at
43 actuarially justified rates.

44 (b) Alternative or reissued policies or contracts shall be offered
45 without requiring evidence of insurability, and shall not provide for
46 any waiting period or exclusion that would not have applied under
47 the terminated policy or contract.

- 1 (c) The association may reinsure any alternative or reissued
2 policy or contract.
- 3 (5) (a) Alternative policies or contracts adopted by the
4 association shall be subject to the approval of the commissioner.
- 5 (b) Alternative policies or contracts shall contain at least the
6 minimum statutory provisions required in this State and provide
7 benefits that shall not be unreasonable in relation to the premium
8 charged under reasonable actuarial assumptions. The association
9 shall set the premium in accordance with a table of rates which it
10 shall adopt. The premium shall reflect the amount of insurance or
11 coverage to be provided and the age and class of risk of each
12 insured or enrollee.
- 13 (c) Any alternative policy or contract issued by the association
14 shall provide coverage of a type similar to that of the policy or
15 contract issued by the impaired or insolvent insurer, as determined
16 by the association.
- 17 (6) If the association elects to reissue terminated coverage at a
18 premium rate different from that charged under the terminated
19 policy or contract, the premium shall be actuarially justified and set
20 by the association in accordance with the amount of insurance or
21 coverage provided and the age and class of risk, subject to approval
22 of the commissioner.
- 23 (7) The association's obligations with respect to coverage under
24 any policy or contract of the impaired or insolvent insurer or under
25 any reissued or alternative policy or contract shall cease on the date
26 that coverage, policy or contract is replaced by another similar
27 coverage, policy or contract by the **【policyholder】** policy or
28 contract owner, the enrollee, the association, or the insured.
- 29 e. When proceeding under **【subparagraph (b) of paragraph (1)**
30 **of subsection b. or】** subsection c. of this section with respect to any
31 policy or contract carrying guaranteed minimum interest rates, the
32 association shall assure the payment or crediting of a rate of interest
33 at least equal to that specified in paragraph (3) of subsection c. of
34 section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3).
- 35 f. Nonpayment of premiums within 31 days after the date
36 required, after effective notice shall have been given of the terms of
37 any guaranteed, assumed, alternative or reissued policy or contract
38 or substitute coverage, shall terminate the association's obligations
39 under that policy, contract or coverage under **【this act】** P.L.1991,
40 c.208 (C.17B:32A-1 et seq.) with respect to that policy, contract or
41 coverage, except with respect to any claims incurred or any net cash
42 surrender value which may be due in accordance with the
43 provisions of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
- 44 g. Premiums due for coverage after entry of an order of
45 receivership or liquidation of any insolvent insurer shall belong to,
46 and be payable at the direction of, the association.

1 h. The protection provided by **[this act]** P.L.1991, c.208
2 (C.17B:32A-1 et seq.) shall not apply if any guaranty protection is
3 provided to residents of this State by the law of the domiciliary
4 state or jurisdiction of the impaired or insolvent insurer other than
5 this State.

6 i. In carrying out its duties under subsections b. and c. of this
7 section, the association may, subject to approval by the court:

8 (1) impose reasonable and necessary policy or contract liens in
9 connection with any guaranty, assumption or reinsurance
10 agreement, if the association finds that the amounts which can be
11 assessed under this act are less than the amounts needed to assure
12 full and prompt performance of the association's duties under **[this**
13 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), or that the economic or
14 financial conditions as they affect member insurers are sufficiently
15 adverse to render the imposition of those policy or contract liens, to
16 be in the public interest; or

17 (2) impose temporary moratoriums or liens on payments of cash
18 values and policy loans, or any other right to withdraw funds held
19 in conjunction with policies or contracts, in addition to any
20 contractual provisions for deferral of cash or policy loan value.

21 j. If the association fails to act within a reasonable period of
22 time as provided in **[subparagraph (b) of paragraph (1) of**
23 **subsection b. and]** subsections b. and c. **[and d.]** of this section, the
24 commissioner shall have the powers and duties of the association
25 provided by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.) with
26 respect to impaired or insolvent insurers.

27 k. The association may render assistance and advice to the
28 commissioner concerning the receivership, conservation,
29 rehabilitation, liquidation, payment of claims, continuance of
30 coverage, or the performance of other contractual obligations of any
31 impaired or insolvent insurer.

32 l. The association shall have standing to appear before any
33 court in this State with jurisdiction over an impaired or insolvent
34 insurer with respect to which the association is or may become
35 obligated under **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.).
36 That standing shall extend to all matters germane to the powers and
37 duties of the association, including, but not limited to, proposals for
38 reinsuring, reissuing, modifying or guaranteeing the policies or
39 contracts of the impaired or insolvent insurer and the termination of
40 the policies or contracts and contractual obligations. The
41 association shall also have the right to appear or intervene before a
42 court in another state with jurisdiction over an impaired or insolvent
43 insurer for which the association is or may become obligated or
44 with jurisdiction over **[a third party]** any person or property against
45 whom the association may have rights through subrogation **[of the**
46 **insurer's policyholders]** or otherwise.

1 m. (1) Any person receiving benefits under **[this act]**
2 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be deemed to have
3 assigned the rights under, and any causes of action relating to, the
4 covered policy or contract to the association to the extent of the
5 benefits received pursuant to **[this act]** P.L.1991, c.208
6 (C.17B:32A-1 et seq.), whether the benefits are payments of or on
7 account of contractual obligations, continuation of coverage or
8 provision of substitute or alternative policies, contracts, or
9 coverages. The association may require an assignment to it of such
10 rights and causes of action by any payee, policy or contract owner,
11 beneficiary, insured, enrollee, or annuitant as a condition precedent
12 to the receipt of any right or benefits conferred by **[this act]**
13 P.L.1991, c.208 (C.17B:32A-1 et seq.) upon that person.

14 (2) The subrogation rights of the association under this
15 subsection shall have the same priority against the assets of the
16 impaired or insolvent insurer as that possessed by the person
17 entitled to receive benefits under **[this act]** P.L.1991, c.208
18 (C.17B:32A-1 et seq.).

19 (3) In addition to the rights of subrogation contained in
20 paragraphs (1) and (2) of this subsection, the association shall have
21 all common law rights of subrogation and any other equitable or
22 legal remedy which would have been available to the impaired or
23 insolvent insurer or **[holder of a]** policy or contract owner,
24 beneficiary, enrollee, or payee with respect to that policy or
25 contract.

26 (4) In addition to the rights contained in paragraphs (1), (2) and
27 (3) of this subsection, in the case of any unallocated annuity
28 contract for which benefits are paid by the association under **[this**
29 **act]** P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be
30 deemed to have assigned to it the rights and causes of action of any
31 employee or association of natural persons against the contract
32 **[holder]** owner of such unallocated annuity contract for the
33 amounts paid by the association under **[this act]** P.L.1991, c.208
34 (C.17B:32A-1 et seq.).

35 (5) If the preceding provisions of this subsection are invalid or
36 ineffective with respect to any person or claim for any reason, the
37 amount payable by the association with respect to the related
38 covered obligations shall be reduced by the amount realized by any
39 other person with respect to the person or claim that is attributable
40 to the policies or contracts (or portion thereof) covered by the
41 association.

42 (6) If the association has provided benefits with respect to a
43 covered obligation and a person recovers amounts as to which the
44 association has rights as described in the preceding paragraphs of
45 this subsection, the person shall pay to the association the portion of
46 the recovery attributable to the policies or contracts (or portion
47 thereof) covered by the association.

- 1 n. The association may:
- 2 (1) enter into any contracts necessary or proper to carry out the
3 provisions and purposes of **【this act】** P.L.1991, c.208 (C.17B:32A-
4 1 et seq.);
- 5 (2) sue or be sued, including taking any legal actions necessary
6 or proper to recover any unpaid assessments imposed pursuant to
7 section 8 of **【this act】** P.L.1991, c.208 (C.17B:32A-8) and to settle
8 claims or potential claims against it;
- 9 (3) borrow money to effectuate the purposes of **【this act】**
10 P.L.1991, c.208 (C.17B:32A-1 et seq.). Any notes or other evidence
11 of indebtedness of the association not in default shall be legal
12 investments for domestic insurers and may be carried as admitted
13 assets;
- 14 (4) employ or retain persons necessary to handle the financial
15 transactions of the association, and to perform other functions as are
16 necessary or proper under **【this act】** P.L.1991, c.208 (C.17B:32A-1
17 et seq.);
- 18 (5) take any legal action necessary to avoid payment of
19 improper claims;
- 20 (6) exercise, for the purposes of **【this act】** P.L.1991, c.208
21 (C.17B:32A-1 et seq.) and to the extent approved by the
22 commissioner, the powers of a domestic life insurer or health
23 insurer, health service corporations, hospital service corporations,
24 medical service corporations, or health maintenance organizations
25 but in no case shall the association issue insurance policies or
26 annuity contracts other than those issued to perform its obligations
27 under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.);
- 28 (7) organize itself as a corporation or in other legal form
29 permitted by the law of the State;
- 30 (8) request information from a person seeking coverage from the
31 association in order to aid the association in determining its
32 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.) with
33 respect to the person, and the person shall promptly comply with
34 the request;
- 35 (9) unless prohibited by law, in accordance with the terms and
36 conditions of the policy or contract, file for actuarially justified rate
37 or premium increases for any policy or contract for which it
38 provides coverage under P.L.1991, c.208 (C.17B:32A-1 et seq.);
39 and
- 40 (10) take other necessary or appropriate action to discharge its
41 duties and obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.)
42 or to exercise its powers under P.L.1991, c.208 (C.17B:32A-1 et
43 seq.).
- 44 o. The association may join an organization of one or more other
45 state associations of similar purposes, to further the purposes and
46 administer the powers and duties of the association.

1 p. (1) (a) At any time within 180 days of the date of the order
2 of liquidation, the association may elect to succeed to the rights and
3 obligations of the ceding member insurer that relate to policies,
4 contracts, or annuities covered, in whole or in part, by the
5 association, in each case under any one or more reinsurance
6 contracts entered into by the insolvent insurer and its reinsurers and
7 selected by the association. Any such assumption shall be effective
8 as of the date of the order of liquidation. The election shall be
9 effected by the association or the National Organization of Life and
10 Health Insurance Guaranty Associations (NOLGHA) on its behalf
11 sending written notice, return receipt requested, to the affected
12 reinsurers.

13 (b) To facilitate the earliest practicable decision about whether
14 to assume any of the contracts of reinsurance, and in order to
15 protect the financial positions of the estate, the receiver and each
16 reinsurer of the ceding member insurer shall make available upon
17 request to the association or the NOLGHA on its behalf as soon as
18 possible after commencement of formal delinquency proceedings:

19 (i) copies of in-force contracts of reinsurance and all related
20 files and records relevant to the determination of whether such
21 contracts should be assumed; and

22 (ii) notices of any defaults under the reinsurance contracts or
23 any known event or condition which with the passage of time could
24 become a default under the reinsurance contracts.

25 (c) The following subparagraphs shall apply to reinsurance
26 contracts so assumed by the association:

27 (i) The association shall be responsible for all unpaid premiums
28 due under the reinsurance contracts for periods both before and
29 after the date of the order of liquidation, and shall be responsible for
30 the performance of all other obligations to be performed after the
31 date of the order of liquidation, in each case which relate to
32 policies, contracts, or annuities covered, in whole or in part, by the
33 association. The association may charge policies, contracts, or
34 annuities covered in part by the association, through reasonable
35 allocation methods, the costs for reinsurance in excess of the
36 obligations of the association and shall provide notice and an
37 accounting of these charges to the liquidator;

38 (ii) The association shall be entitled to any amounts payable by
39 the reinsurer under the reinsurance contracts with respect to losses
40 or events that occur in periods after the date of the order of
41 liquidation and that relate to policies, contracts, or annuities
42 covered, in whole or in part, by the association, provided that, upon
43 receipt of those amounts, the association shall be obliged to pay to
44 the beneficiary under the policy, contracts, or annuity on account of
45 which the amounts were paid a portion of the amount equal to the
46 lesser of (1) the amount received by the association; and (2) the
47 excess of the amount received by the association over the amount
48 equal to the benefits paid by the association on account of the

1 policy, contracts, or annuity less the retention of the insurer
2 applicable to the loss or event.

3 (iii) Within 30 days following the association's election (the
4 "election date"), the association and each reinsurer under contracts
5 assumed by the association shall calculate the net balance due to or
6 from the association under each reinsurance contract as of the
7 election date with respect to policies, contracts or annuities covered,
8 in whole or in part, by the association, which calculation shall give
9 full credit to all items paid by either the member insurer or its
10 receiver or the reinsurer prior to the election date. The reinsurer
11 shall pay the receiver any amounts due for losses or events prior to
12 the date of the order of liquidation, subject to any set-off for
13 premiums unpaid for periods prior to the date, and the association
14 or reinsurer shall pay any remaining balance due the other, in each
15 case within five days of the completion of the aforementioned
16 calculation. Any disputes over the amounts due to either the
17 association or the reinsurer shall be resolved by arbitration pursuant
18 to the terms of the affected reinsurance contracts or, if the contract
19 contains no arbitration clause, as otherwise provided by law. If the
20 receiver has received any amounts due the association pursuant to
21 subsubparagraph (ii) of this subparagraph, the receiver shall remit
22 the same to the association as promptly as practicable.

23 (iv) If the association or receiver, on the association's behalf,
24 within 60 days of the election date, pays the unpaid premiums due
25 for periods both before and after the election date that relate to
26 policies, contracts, or annuities covered, in whole or in part, by the
27 association, the reinsurer shall not be entitled to terminate the
28 reinsurance contracts for failure to pay premium insofar as the
29 reinsurance contracts relate to policies, contracts, or annuities
30 covered, in whole or in part, by the association, and shall not be
31 entitled to set off any unpaid amounts due under other contracts, or
32 unpaid amounts due from parties other than the association, against
33 amounts due the association.

34 (2) During the period from the date of the order of liquidation
35 until the election date (or, if the election date does not occur, until
36 180 days after the date of the order of liquidation):

37 (a) (i) the association and the reinsurer shall not have rights or
38 obligations under reinsurance contracts that the association has the
39 right to assume under paragraph (1) of this subsection, whether for
40 period prior to or after the date of the order of liquidation; and

41 (ii) the reinsurer, the receiver and the association shall, to the
42 extent, practicable, provide each other data and records reasonably
43 requested.

44 (b) provided that once the association has elected to assume a
45 reinsurance contract, the parties' rights and obligations shall be
46 governed paragraph (1) of this subsection.

47 (3) If the association does not elect to assume a reinsurance
48 contract by the election date pursuant to paragraph (1) of this

1 subsection, the association shall have no rights or obligations, in
2 each case for periods both before and after the date of the order of
3 liquidation, with respect to the reinsurance contract.

4 (4) When policies, contracts, or annuities, or covered
5 obligations with respect thereto, are transferred to an assuming
6 insurer, reinsurance on the policies, contracts, or annuities may also
7 be transferred by the association, in the case of contracts assumed
8 under paragraph (1) of this subsection, subject to the following:

9 (a) unless the reinsurer and the assuming insurer agree
10 otherwise, the reinsurance contract transferred shall not cover any
11 new policies of insurance, contracts, or annuities in addition to
12 those transferred;

13 (b) the obligations described in paragraph (1) of this subsection
14 shall no longer apply with respect to matters arising after the
15 effective date of the transfer; and

16 (c) notice shall be given in writing, return receipt requested, by
17 the transferring party to the affected reinsurer not less than 30 days
18 prior to the effective date of the transfer.

19 (5) The provisions of this subsection shall supersede the
20 provisions of any State law or any affected reinsurance contract that
21 provides for or requires any payment of reinsurance proceeds, on
22 account of losses or events that occur in periods after the date of the
23 order of liquidation, to the receiver of the insolvent insurer or any
24 other person. The receiver shall remain entitled to any amounts
25 payable by the reinsurer under the reinsurance contracts with
26 respect to losses or events that occur in periods prior to the date of
27 the order of liquidation, subject to applicable setoff provisions.

28 (6) Except as otherwise provided in this subsection, nothing in
29 this subsection shall alter or modify the terms and conditions of any
30 reinsurance contract. Nothing in this subsection shall abrogate or
31 limit any rights of any reinsurer to claim that it is entitled to rescind
32 a reinsurance contract. Nothing in this subsection shall give a
33 policyholder, contract owner, enrollee, certificate holder, or
34 beneficiary an independent cause of action against a reinsurer that is
35 not otherwise set forth in the reinsurance contract. Nothing in this
36 subsection shall limit or affect the association's rights as a creditor
37 of the estate against the assets of the estate. Nothing in this
38 subsection shall apply to reinsurance agreements covering property
39 or casualty risks.

40 q. The board of directors of the association shall have
41 discretion and may exercise reasonable business judgment to
42 determine the means by which the association is to provide the
43 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) in an economical
44 and efficient manner.

45 r. Where the association has arranged or offered to provide the
46 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) to a covered
47 person under a plan or arrangement that fulfills the association's
48 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.), the person

1 shall not be entitled to benefits from the association in addition to
2 or other than those provided under the plan or arrangement.

3 s. Venue in a suit against the association arising under
4 P.L.1991, c.208 (C.17B:32A-1 et seq.) shall be in Monmouth
5 County. The association shall not be required to give an appeal
6 bond in an appeal that relates to a cause of action arising under
7 P.L.1991, c.208 (C.17B:32A-1 et seq.).

8 t. In carrying out its duties in connection with guaranteeing,
9 assuming, reissuing, or reinsuring policies or contracts under
10 subsections a., b., c, or d. of this section, the association may issue
11 substitute coverage for a policy or contract that provides an interest
12 rate, crediting rate or similar factor determined by use of an index
13 or other external reference stated in the policy or contract employed
14 in calculating returns or changes in value by issuing an alternative
15 policy or contract in accordance with the following provisions:

16 (1) in lieu of the index or external reference provided for in the
17 original policy or contract, the alternative policy or contract
18 provides for a fixed interest rate; payment of dividends with
19 minimum guarantees; or a different method for calculating interest
20 or changes in value;

21 (2) there is no requirement for evidence of insurability, waiting
22 period or other exclusion that would not have applied under the
23 replaced policy or contract; and

24 (3) the alternative policy or contract is substantially similar to
25 the replaced policy or contract in all other material terms.

26 u. A deposit in this State, held pursuant to law or required by
27 the commissioner for the benefit of creditors, including policy or
28 contract owners, not turned over to the domiciliary liquidator upon
29 the entry of a final order of liquidation or order approving a
30 rehabilitation plan of a member insurer domiciled in this State or in
31 a reciprocal state pursuant to section 57 of P.L.1992, c.65
32 (C.17B:32-87) shall be promptly paid to the association. The
33 association shall be entitled to retain a portion of any amount so
34 paid to it equal to the percentage determined by dividing the
35 aggregate amount of policy or contract owners' claims related to
36 that insolvency for which the association has provided statutory
37 benefits by the aggregate amount of all policy or contract owners'
38 claims in the State related to that insolvency and shall remit to the
39 domiciliary receiver the amount so paid to the association less the
40 amount retained pursuant to this subsection. Any amount so paid to
41 the association and retained by it shall be treated as a distribution of
42 estate assets pursuant to applicable State receivership law dealing
43 with early access disbursements.

44 (cf: P.L.1991, c.208, s.7)

45

46 7. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to
47 read as follows:

1 8. a. For the purpose of providing the funds necessary to carry
2 out the powers and duties of the association, the board of directors
3 shall assess the member insurers, separately for each account, at
4 such time and for such amounts as the board finds necessary.
5 Assessments shall be due not less than 30 days after prior written
6 notice to the member insurers and shall accrue interest at the
7 percentage of interest prescribed in the Rules Governing the Courts
8 of the State of New Jersey for judgments, awards and orders for the
9 payment of money, on and after the due date.

10 b. There shall be two classes of assessments, as follows:

11 (1) Class A assessments shall be made for the purpose of
12 meeting administrative and legal costs of the association which are
13 not objected to by the commissioner and other expenses **【and**
14 **examinations conducted under the authority of subsection e. of**
15 **section 11 of this act】**. Class A assessments shall also be made,
16 upon the request of the commissioner, for the purpose of meeting
17 costs incurred by or on behalf of the department in the
18 administration of an insolvent insurer to the extent those costs
19 exceed assets of the insolvent insurer available for that purpose.
20 Class A assessments need not be related to a particular impaired or
21 insolvent insurer. The amount of any Class A assessment shall be
22 determined by the board.

23 (2) Class B assessments shall be made to the extent necessary to
24 carry out the powers and duties of the association under section 7 of
25 **【this act】** P.L.1991, c.208 (C.17B:32A-7) with respect to an
26 impaired or an insolvent insurer. The amount of any Class B
27 assessment, except for assessments related to long-term care
28 insurance, shall be allocated for assessment purposes **【among】**
29 between the accounts and among subaccounts of the life insurance
30 and annuity account, pursuant to an allocation formula which may
31 be based on the premiums or reserves of the impaired or insolvent
32 insurer or any other standard deemed by the board in its sole
33 discretion as being fair and reasonable under the circumstances.

34 (3) The amount of Class B assessments for long-term care
35 insurance written by the impaired or insolvent insurer shall be
36 allocated according to a methodology included in the plan of
37 operation and approved by the commissioner. The methodology
38 shall provide for 50 percent of the assessment to be allocated to
39 accident and health member insurers and 50 percent to be allocated
40 to life and annuity member insurers.

41 c. (1) Class B assessments against member insurers for each
42 account and subaccount shall be in the proportion that the premiums
43 received on business in this State by each assessed member insurer
44 on policies or contracts covered by each account for the three most
45 recent calendar years for which information is available preceding
46 the year in which the member insurer became impaired or insolvent,
47 as the case may be, bears to such premiums received on business in
48 this State for such calendar years by all assessed member insurers.

1 (2) Assessments for funds to meet the requirements of the
2 association with respect to an impaired or insolvent insurer shall be
3 made as necessary to implement the purposes of **[this act]**
4 P.L.1991, c.208 (C.17B:32A-1 et seq.). Classification of
5 assessments under subsection b. of this section and computation of
6 assessments under this subsection c. shall be made with a
7 reasonable degree of accuracy, recognizing that exact
8 determinations may not always be possible.

9 d. The association shall **[exempt,]** abate or defer, in whole or
10 in part, the assessment of a member insurer if, in the opinion of the
11 commissioner, payment of the assessment would endanger the
12 ability of the member insurer to fulfill its contractual obligations or
13 places the member insurer in an unsafe or unsound financial
14 condition. In the event an assessment against a member insurer is
15 **[exempted,]** abated or deferred, in whole or in part, the amount by
16 which that assessment is **[exempted,]** abated or deferred shall be
17 assessed against the other member insurers in a manner consistent
18 with the basis for assessments set forth in this section. Once the
19 conditions that caused a deferral have been removed or rectified, the
20 member insurer shall pay all assessments that were deferred
21 pursuant to a repayment plan approved by the commissioner.

22 e. (1) The total of all assessments imposed under subsection b.
23 of this section upon a member insurer for the life insurance and
24 annuity account and for each subaccount thereunder shall not in any
25 one calendar year exceed two percent and for the health **[insurance]**
26 account shall not in any one calendar year exceed two percent of
27 that member insurer's average premiums, as reported in the annual
28 statement in a form prescribed by the commissioner, received in this
29 State on the policies and contracts covered by the account during
30 the three calendar years preceding the year in which the member
31 insurer became an impaired or insolvent insurer. If the maximum
32 assessment, together with the other assets of the association in any
33 account, does not provide in any one year in either account an
34 amount sufficient to carry out the responsibilities of the association,
35 the necessary additional funds shall be assessed as soon thereafter
36 as permitted by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.)

37 (2) If a one percent assessment for any subaccount of the life
38 insurance and annuity account in any one year does not provide an
39 amount sufficient to carry out the responsibilities of the association,
40 then pursuant to paragraph (1) of subsection c. of this section, the
41 board shall assess all subaccounts of the life insurance and annuity
42 account for the necessary additional amount, subject to the
43 maximum stated in paragraph (1) of this subsection.

44 (3) The board may provide in the plan of operation a method of
45 allocating funds among claims, whether relating to one or more
46 impaired or insolvent insurers, when the maximum assessment will
47 be insufficient to cover anticipated claims.

1 f. The board may, by an equitable method as established in the
2 plan of operation, refund to member insurers, in proportion to the
3 contribution of each member insurer to that account, the amount by
4 which the assets of an account exceed the amount the board, with
5 the concurrence of the commissioner, finds is necessary to carry out
6 during the coming year the obligations of the association with
7 respect to that account, including assets accruing from assignment,
8 subrogation, net realized gains and income from investments. A
9 reasonable amount may be retained in any account to provide funds
10 for the continuing expenses of the association and for future losses.

11 g. Except for that portion of assessments **[which]** that may be
12 offset against premium taxes pursuant to section 18 of **[this act]**
13 P.L.1991, c.208 (C.17B:32A-18), it shall be proper for any member
14 insurer, in determining its premium rates and policy owner
15 dividends as to any kind of insurance, health service corporation
16 business, hospital service corporation business, medical service
17 corporation business, or health maintenance organization business
18 within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
19 seq.), to consider the amount reasonably necessary to meet its
20 assessment obligations under **[this act]** P.L.1991, c.208
21 (C.17B:32A-1 et seq.).

22 h. The association shall issue to each member insurer paying an
23 assessment pursuant to **[this act]** P.L.1991, c.208 (C.17B:32A-1 et
24 seq.), other than a Class A assessment, a certificate of contribution,
25 in a form and manner prescribed by the commissioner, for the
26 amount of the assessment so paid. All outstanding certificates shall
27 be of equal dignity and priority without reference to amount or date
28 of issue. A certificate of contribution may be shown by the member
29 insurer in its financial statement as an asset in such form and
30 manner and for such amount and period of time as the
31 commissioner may approve.

32 i. (1) A member insurer that wishes to protest all or part of an
33 assessment shall pay when due the full amount of the assessment as
34 set forth in the notice provided by the association. The payment
35 shall be available to meet association obligations during the
36 pendency of the protest or any subsequent appeal. Payment shall be
37 accompanied by a statement in writing that the payment is made
38 under protest and setting forth a brief statement of the grounds for
39 the protest.

40 (2) Within 60 days following the payment of an assessment
41 under protest by a member insurer, the association shall notify the
42 member insurer in writing of its determination with respect to the
43 protest unless the association notifies the member insurer that
44 additional time is required to resolve the issues raised by the
45 protest.

46 (3) Within 30 days after a final decision has been made, the
47 association shall notify the protesting member insurer in writing of

1 that final decision. Within 60 days of receipt of notice of the final
2 decision, the protesting member insurer may appeal that final action
3 to the commissioner.

4 (4) In the alternative to rendering a final decision with respect to
5 a protest based on a question regarding the assessment base, the
6 association may refer protests to the commissioner for a final
7 decision, with or without a recommendation from the association.

8 (5) If the protest or appeal on the assessment is upheld, the
9 amount paid in error or excess shall be returned to the member
10 insurer. Interest on a refund due a protesting member insurer shall
11 be paid at the rate actually earned by the association.

12 j. The association may request information of member insurers
13 in order to aid in the exercise of its power under this section and
14 member insurers shall promptly comply with a request.

15 (cf: P.L.1994, c.180 s.1)

16

17 8. Section 9 of P.L.1991, c.208 (C.17B:32A-9) is amended to
18 read as follows:

19 9. a. (1) The association shall submit to the commissioner a
20 plan of operation and any amendments thereto necessary or suitable
21 to assure the fair, reasonable, and equitable administration of the
22 association. The plan of operation and any amendments thereto
23 shall become effective upon the commissioner's written approval or
24 at the expiration of 30 days after submission if it has not been
25 disapproved.

26 (2) If the association fails to submit a suitable plan of operation
27 within 120 days following the effective date of **[this act]** P.L.1991,
28 c.208 (C.17B:32A-1 et seq.) or if at any time thereafter the
29 association fails to submit suitable amendments to the plan, the
30 commissioner shall adopt such plan or amendments necessary to
31 effectuate the provisions of **[this act]** P.L.1991, c.208 (C.17B:32A-
32 1 et seq.). The plan or amendments shall continue in force until
33 modified by the commissioner or superseded by a plan submitted by
34 the association and approved by the commissioner.

35 b. All member insurers shall comply with the plan of operation.

36 c. The plan of operation shall, in addition to requirements
37 enumerated elsewhere in **[this act]** P.L.1991, c.208 (C.17B:32A-1
38 et seq.):

39 (1) establish procedures for handling the assets of the
40 association;

41 (2) establish the amount and method of reimbursing members of
42 the board of directors under subsection c. of section 6 of **[this act]**
43 P.L.1991, c.208 (C.17B:32A-6);

44 (3) establish regular places and times for meetings, including
45 telephone conference calls, of the board of directors;

46 (4) establish procedures for records to be kept of all financial
47 transactions of the association, its agents, and the board of
48 directors;

- 1 (5) establish the procedures whereby selections for the board of
2 directors will be made and submitted to the commissioner;
- 3 (6) establish any additional procedures for the imposition of
4 assessments under section 8 of **【this act】** P.L.1991, c.208
5 (C.17B:32A-8); **【and】**
- 6 (7) contain additional provisions necessary or proper for the
7 execution of the powers and duties of the association;
- 8 (8) establish procedures whereby a director may be removed for
9 cause, including in the case where a member insurer director
10 becomes an impaired or insolvent insurer; and
- 11 (9) require the board of directors to establish a policy and
12 procedures for addressing conflicts of interests.
- 13 d. The plan of operation may provide for the delegation of any
14 or all powers and duties of the association, except those set forth in
15 paragraph (3) of subsection m. of section 7 of P.L.1991, c.208
16 (C.17B:32A-7) and section 8 of **【this act】** P.L.1991, c.208
17 (C.17B:32A-8), to a corporation, association, or other organization
18 which performs or will perform functions similar to those of the
19 association, or its equivalent, in two or more other states. Such a
20 corporation, association, or organization shall be reimbursed for any
21 payments made on behalf of the association and shall be paid for its
22 performance of any function of the association. A delegation under
23 this subsection d. shall take effect only with the approval of both
24 the board of directors and the commissioner, and may be made only
25 to a corporation, association, or organization which extends
26 protection not substantially less favorable or effective than that
27 provided by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
28 (cf: P.L.1991, c.208, s.9)
29
- 30 9. Section 10 of P.L.1991, c.208 (C.17B:32A-10) is amended
31 to read as follows:
- 32 10. a. In addition to the duties and powers enumerated
33 elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), the
34 commissioner shall:
- 35 (1) upon request of the board of directors, provide the
36 association with a statement of the premiums in this State and any
37 other appropriate states for each member insurer;
- 38 (2) when an impairment is declared and the amount of the
39 impairment is determined, serve a demand upon the impaired
40 insurer to make good the impairment within a reasonable time.
41 Notice to the impaired insurer shall constitute notice to its
42 shareholders, if any. The failure of the impaired insurer to
43 promptly comply with a demand shall not excuse the association
44 from the performance of its powers and duties under **【this act】**
45 P.L.1991, c.208 (C.17B:32A-1 et seq.);

1 (3) in any liquidation or rehabilitation proceeding involving a
2 domestic member insurer, be appointed as the liquidator or
3 rehabilitator.

4 b. The commissioner may suspend or revoke, after notice and
5 hearing, the certificate of authority to transact **【insurance】** business
6 in this State of any member insurer which fails to pay an assessment
7 when due or fails to comply with the plan of operation. As an
8 alternative, the commissioner may levy a penalty on any member
9 insurer which fails to pay an assessment when due. That penalty
10 shall not exceed five percent of the unpaid assessment per month,
11 but no penalty shall be less than \$100 per month.

12 c. Any action of the board of directors or the association may
13 be appealed to the commissioner by any member insurer if that
14 appeal is taken within **【30】** 60 days of its receipt of notice of the
15 final action being appealed. If a member **【company】** insurer is
16 appealing an assessment, the amount assessed shall be paid to the
17 association and made available to meet association obligations
18 during the pendency of an appeal. If the appeal of an assessment is
19 upheld, the amount paid in error or excess shall be returned to the
20 member **【company】** insurer. Any final action or order of the
21 commissioner shall be subject to judicial review in a court of
22 competent jurisdiction.

23 d. The liquidator, rehabilitator, or conservator **【or receiver】** of
24 any impaired insurer may notify all interested persons of the effect
25 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).
26 (cf: P.L.1991, c.208, s.10)
27

28 10. Section 11 of P.L.1991, c.208 (C.17B:32A-11) is amended
29 to read as follows:

30 11. a. To aid in the detection and prevention of member insurer
31 insolvencies or impairments, the commissioner may:

32 (1) notify the commissioners of insurance or comparable
33 officials of all the other states, territories of the United States and
34 the District of Columbia within 30 days when he takes any of the
35 following actions against a member insurer:

36 (a) revokes its certificate of authority or license;

37 (b) suspends its certificate of authority or license; or

38 (c) makes any formal order that the member insurer restrict its
39 premium writing, obtain additional contributions to surplus,
40 withdraw from this State, reinsure all or part of its business, or
41 increase capital, surplus, or any other account for the security of
42 **【policyholders】** policy or contract owners, certificate holders, or
43 creditors.

44 Notice shall be made in any form the commissioner deems
45 appropriate, including notification under the auspices of the
46 National Association of Insurance Commissioners, hereinafter
47 referred to as NAIC.

1 (2) report to the board of directors when he has taken any of the
2 actions set forth in paragraph (1) of this subsection or has received
3 notification from the commissioner of insurance or comparable
4 official of any other jurisdiction that any such action has been taken
5 in that jurisdiction. The report to the board of directors shall contain
6 all significant details of the action taken or of any such notification
7 received from another jurisdiction.

8 (3) report to the board of directors when he has reasonable cause
9 to believe from any examination, whether completed or in process,
10 of any member **[company]** insurer that the **[company]** member
11 insurer may be an impaired or insolvent insurer. The report and the
12 information therein shall be kept confidential by the board of
13 directors.

14 (4) furnish to the board of directors the NAIC Insurance
15 Regulatory Information System (IRIS) ratios and a list of
16 companies not included in the ratios developed by the NAIC. The
17 board may use the information contained therein in carrying out its
18 duties and responsibilities under this section. The report and
19 information contained therein shall be kept confidential by the
20 board of directors until such time as made public by the
21 commissioner or other lawful authority.

22 b. The commissioner may seek the advice and recommendations
23 of the board of directors **[or member insurers]** concerning any
24 matter affecting **[his]** the duties and responsibilities of the
25 commissioner regarding the financial condition of member insurers
26 and **[companies]** member insurers, health service corporations,
27 hospital service corporations, medical service corporations, or
28 health maintenance organizations seeking admission to transact
29 **[insurance]** business in this State.

30 c. The board of directors **[or any member thereof]** may, upon
31 majority vote, make reports and recommendations to the
32 commissioner upon any matter germane to the solvency,
33 liquidation, rehabilitation, conservation or receivership of any
34 member insurer or germane to the solvency of any **[company]**
35 insurer, health service corporation, hospital service corporation,
36 medical service corporation, or health maintenance organization
37 seeking to do **[insurance]** business in this State. Reports and
38 recommendations made pursuant to this subsection shall not be
39 considered public documents.

40 d. **[It shall be the duty of the]** The board of directors may, upon
41 majority vote, **[to]** notify the commissioner of any information
42 indicating any member insurer may be an impaired or insolvent
43 insurer.

44 e. **[The board of directors may, upon majority vote, request that**
45 **the commissioner order an examination of any member insurer**
46 **which the board in good faith believes may be an impaired or**
47 **insolvent insurer. Such an examination may be conducted as a**

1 NAIC examination or may be conducted by those persons as the
2 commissioner designates. The cost of the examination may be paid
3 by the association and the examination report shall be treated as are
4 other examination reports. In no event shall the examination report
5 be released to the board of directors of the association prior to its
6 release to the public, but this shall not preclude the commissioner
7 from taking action permitted by subsection a. of this section.

8 The commissioner shall notify the board of directors when the
9 examination is completed. The request for an examination shall be
10 kept on file by the commissioner, but it shall not be open to public
11 inspection, if at all, prior to the release of the examination report to
12 the public】 (Deleted by amendment, P.L. , c. (pending before
13 the Legislature as this bill).

14 f. The board of directors may, upon majority vote, make
15 recommendations to the commissioner for the detection and
16 prevention of member insurer insolvencies.

17 【g. The board of directors may, at the conclusion of any insurer
18 insolvency in which the association was obligated to pay covered
19 claims, prepare a report to the commissioner containing any
20 information it may have in its possession bearing on the history and
21 causes of that insolvency. The board shall cooperate with the
22 boards of directors of guaranty associations in other states in
23 preparing a report on the history and causes of insolvency of a
24 particular insurer, and may adopt by reference any report prepared
25 by another association】 (Deleted by amendment, P.L. , c.
26 (pending before the Legislature as this bill).

27 (cf: P.L.1991, c.208, s.11)

28

29 11. Section 12 of P.L.1991, c.208 (C.17B:32A-12) is amended
30 to read as follows:

31 12. a. Nothing in 【this act】 P.L.1991, c.208 (C.17B:32A-1 et
32 seq.) or P.L. , c. (C.) (pending before the Legislature as
33 this bill) shall be construed to reduce the liability for unpaid
34 assessments of the insureds or enrollees of an impaired or insolvent
35 insurer operating under a plan with assessment liability.

36 b. Records shall be kept of all negotiations and meetings in
37 which the association or its representatives are involved to discuss
38 the activities of the association in carrying out its powers and duties
39 under section 7 of 【this act】 P.L.1991, c.208 (C.17B:32A-7).
40 Records of those negotiations or meetings shall be made public only
41 upon the termination of a liquidation, rehabilitation, or conservation
42 【or receivership】 proceeding involving an impaired or insolvent
43 insurer, upon the termination of the impairment or insolvency of the
44 member insurer, or upon the order of a court of competent
45 jurisdiction.

46 c. For the purpose of carrying out its obligations under 【this
47 act】 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be

1 deemed to be a creditor of an impaired or insolvent insurer to the
2 extent of assets attributable to covered policies or contracts reduced
3 by any amounts to which the association is entitled as subrogee
4 pursuant to subsection m. of section 7 of **【this act】** P.L.1991, c.208
5 (C.17B:32A-7). Assets of an impaired or insolvent insurer
6 attributable to covered policies or contracts shall be used to
7 continue all covered policies or contracts and pay all contractual
8 obligations of the impaired or insolvent insurer as required by **【this**
9 **act】** P.L.1991, c.208 (C.17B:32A-1 et seq.). For purposes of this
10 subsection, assets attributable to covered policies or contracts are
11 that proportion of the assets which the reserves that should have
12 been established for such policies or contracts bears to the reserves
13 that should have been established for all policies or contracts of
14 insurance or health benefit plans written by the impaired or
15 insolvent insurer.

16 d. As a creditor of the impaired or insolvent insurer as
17 established in subsection c. of this section and consistent with
18 section 33 of P.L.1992, c.65 (C.17B:32-63), the association and
19 other similar associations shall be entitled to receive a disbursement
20 of assets out of the marshaled assets, from time to time as the assets
21 become available to reimburse it, as a credit against contractual
22 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.). If the
23 liquidator has not, within 120 days of a final determination of
24 insolvency of a member insurer by the receivership court, made an
25 application to the court for the approval of a proposal to disburse
26 assets out of marshaled assets to guaranty associations having
27 obligations because of the insolvency, then the association shall be
28 entitled to make application to the receivership court for approval of
29 its own proposal to disburse these assets.

30 (1) Prior to the termination of any receivership, liquidation,
31 rehabilitation or conservation proceeding, the court may take into
32 consideration the contributions of the respective parties, including
33 the association, the shareholders, enrollees, certificate holders, and
34 **【policyowners】** policy or contract owners of an insolvent insurer,
35 and any other party with a bona fide interest in making an equitable
36 distribution of the ownership rights of that insolvent insurer. In
37 making such a determination, consideration shall be given to the
38 welfare of the **【policyholders】** policy or contract owners, enrollees,
39 and certificate holders, and to the reasonable requirements of a
40 continuing or successor member insurer.

41 (2) No dividend or other distribution to stockholders or
42 policyholders of an impaired or insolvent insurer shall be made
43 until and unless the total amount of valid claims of the association
44 with interest thereon for funds expended in carrying out its powers
45 and duties under section 7 of **【this act】** P.L.1991, c.208
46 (C.17B:32A-7) with respect to that member insurer have been
47 recovered by the association.

1 e. (1) If an order for liquidation or rehabilitation of **[an]** a
2 member insurer domiciled in this State has been entered, the
3 receiver appointed under that order shall have a right to recover on
4 behalf of the member insurer, from any affiliate that controlled it,
5 the amount of distributions, other than stock dividends paid by the
6 member insurer on its capital stock, made at any time during the
7 five years preceding the petition for liquidation or rehabilitation
8 subject to the limitations of paragraphs (2) through (4) of this
9 subsection.

10 (2) No such distribution shall be recoverable if the member
11 insurer shows that the distribution was lawful and reasonable when
12 paid, and that the member insurer did not know and could not
13 reasonably have known that the distribution might adversely affect
14 the ability of the member insurer to fulfill its contractual
15 obligations.

16 (3) Any person who was an affiliate that controlled the member
17 insurer at the time the distributions were paid shall be liable up to
18 the amount of distributions **[he]** received. Any person who was an
19 affiliate that controlled the member insurer at the time the
20 distributions were declared, shall be liable up to the amount of
21 distributions **[he]** which would have been received if they had been
22 paid immediately. If two or more persons are liable with respect to
23 the same distributions, they shall be jointly and severally liable.

24 (4) The maximum amount recoverable under this subsection
25 shall be the amount in excess of all other available assets of the
26 insolvent insurer needed to pay the contractual obligations of the
27 insolvent insurer.

28 (5) If any person liable under paragraph (3) of this subsection is
29 insolvent, all its affiliates that controlled it at the time the
30 distribution was paid shall be jointly and severally liable for any
31 resulting deficiency in the amount recovered from the insolvent
32 affiliate.

33 (cf: P.L.1991, c.280, s.12)

34

35 12. Section 13 of P.L.1991, c.208 (C.17B:32A-13) is amended
36 to read as follows:

37 13. The association shall be subject to examination and
38 regulation by the commissioner. The board of directors shall submit
39 to the commissioner each year, not later than 120 days after the
40 close of the association's fiscal year, a financial report in a form
41 approved by the commissioner and a report of its activities during
42 the preceding fiscal year. Upon request of a member insurer, the
43 association shall provide a copy of the report.

44 (cf: P.L.1991, c.208, s.13)

45

46 13. Section 15 of P.L.1991, c.208 (C.17B:32A-15) is amended
47 to read as follows:

1 15. a. There shall be no liability on the part of, and no cause of
2 action of any nature shall arise against, any member insurer or its
3 agents or employees, the association or its agents or employees,
4 members of the board of directors, or the commissioner or his
5 representatives, for any action or omission by them in the
6 performance of their powers and duties under **【this act】** P.L.1991,
7 c.208 (C.17B:32A-1 et seq.). This immunity shall extend to the
8 participation in any organization of one or more other state
9 associations of similar purposes and to any such organization and
10 its agents or employees.

11 b. With respect to any impairment or insolvency of a health
12 service corporation created pursuant to P.L.1985, c.236 (C.17:48E-1
13 et seq.), the association shall have no cause of action against any
14 not-for-profit or nonprofit corporation that is regulated by a law
15 governing the conduct of not-for-profit or nonprofit corporations,
16 except in the event of willful or wanton conduct, unless the not-for-
17 profit or nonprofit corporation is a provider of health care services
18 as defined in section 1 of P.L.1985, c.236 (C.17:48E-1). For
19 purposes of this subsection, "willful or wanton conduct" means a
20 course of action which shows the actual or deliberate intent to cause
21 harm.

22 (cf: P.L.1991, c.208, s.15)

23

24 14. Section 16 of P.L.1991, c.208 (C.17B:32A-16) is amended
25 to read as follows:

26 16. Upon application and notice, all proceedings in which an
27 insolvent insurer is a party or is obligated to defend a party in any
28 court in this State shall be stayed for **【120】** 180 days and any
29 additional time thereafter as may be determined by the court from
30 the date the insolvency is determined or any ancillary proceeding is
31 initiated in the State, whichever is later, to permit proper defense by
32 the association of all pending causes of action. With respect to any
33 covered claims arising from a judgment under any decision, verdict
34 or finding based on the default of the insolvent insurer or its failure
35 to defend an insured, the association either on its own behalf or on
36 behalf of the insured may apply to have the judgment, order,
37 decision, verdict or finding set aside by the court in which the
38 judgment, order, decision, verdict or finding is entered and shall be
39 permitted to defend against the claim on the merits.

40 (cf: P.L.1991, c.208, s.16)

41

42 15. Section 17 of P.L.1991, c.208 (C.17B:32A-17) is amended
43 to read as follows:

44 17. a. No person, including **【an】** a member insurer, agent or
45 affiliate of **【an】** a member insurer or insurance producer shall
46 make, publish, disseminate, circulate or place before the public or
47 cause directly or indirectly, to be made, published, disseminated,
48 circulated or placed before the public, in any newspaper, magazine

1 or other publication or in the form of a notice, circular, pamphlet,
2 letter or poster, or over any radio station or television station, or in
3 any other way, any advertisement, announcement or statement,
4 written or oral, which uses the existence of the association for the
5 purpose of sales, solicitation, or inducement to purchase any form
6 of insurance or other coverage covered by **【this act】** P.L.1991,
7 c.208 (C.17B:32A-1 et seq.). This subsection shall not apply to the
8 department or the association or to any other entity which does not
9 sell or solicit insurance or coverage by a health service corporation,
10 hospital service corporation, medical service corporation, or health
11 maintenance organization.

12 b. Within 180 days of the effective date of **【this act】** P.L.1991,
13 c.208 (C.17B:32A-1 et seq.), the association shall prepare a
14 summary document describing the general purposes and current
15 limitations of **【the act】** P.L.1991, c.208 (C.17B:32A-1 et seq.)
16 which complies with subsection c. of this section. This document
17 shall be submitted to the commissioner for approval. Sixty days
18 after receiving that approval, no member insurer may deliver a
19 policy or contract described in subsection b. of section 3 of **【this**
20 **act】** P.L.1991, c.208 (C.17B:32A-3) to a policy or contract
21 **【holder】** owner, certificate holder, or enrollee unless the document
22 is delivered to the policy or contract **【holder】** owner, certificate
23 holder, or enrollee prior to or at the time of delivery of the policy or
24 contract. The document should also be available upon request by a
25 **【policyholder】** policy or contract owner, certificate holder, or
26 enrollee. The distribution, delivery, contents or interpretation of this
27 document shall not mean that either the policy or the contract or the
28 policy or contract owner, certificate holder, or enrollee thereof
29 would be covered in the event of the impairment or insolvency of a
30 member insurer. The document shall be revised by the association
31 as amendments to the act may require. Failure to receive this
32 document does not give the **【policyholder】** policy or contract
33 **【holder】** owner, certificate holder, enrollee, or insured any greater
34 rights than those stated in **【this act】** P.L.1991, c.208 (C.17B:32A-1
35 et seq.). **【Delivery of the document required by this subsection shall**
36 **not be required however, in the case of a policy or contract**
37 **excluded from coverage under this act pursuant to subsection c. of**
38 **section 3 of this act and with respect to which notice as required by**
39 **subsection d. of this section has been given.】**

40 c. The document prepared pursuant to subsection b. of this
41 section shall contain a clear and conspicuous disclaimer on its face.
42 The commissioner shall promulgate a rule establishing the form and
43 content of the disclaimer. The disclaimer shall:

- 44 (1) state the name and address of the association and the
45 department;
- 46 (2) prominently warn the policy owner, contract owner,
47 certificate holder, or **【contract holder】** enrollee that the association

1 may not cover the policy or contract or, if coverage is available, it
2 will be subject to substantial limitations and exclusions and
3 conditioned on continued residence in this State;

4 (3) state that the member insurer and its **【insurance】** producers
5 are prohibited by law from using the existence of the association for
6 the purpose of sales, solicitation or inducement to purchase any
7 form of insurance, health service corporation coverage, hospital
8 service corporation coverage, medical service corporation coverage,
9 or health maintenance organization coverage;

10 (4) emphasize that the policy or contract owner, certificate
11 holder, or 【contract holder】 enrollee should not rely on coverage
12 under the association when selecting **【an】** a member insurer, health
13 service corporation, hospital service corporation, medical service
14 corporation, or health maintenance organization; 【and】

15 (5) state the types of policies or contracts for which guaranty
16 funds will provide coverage;

17 (6) explain rights available and procedures for filing a complaint
18 to allege a violation of any provisions of P.L.1991, c.208
19 (C.17B:32A-1 et seq.); and

20 (7) provide other information as directed by the commissioner,
21 including, but not limited to, sources for information about the
22 financial condition of member insurers provided that the
23 information is not proprietary and is subject to disclosure under
24 P.L.1963, c.73 (C.47:1A-1 et seq.).

25 d. **【No insurer or insurance producer may deliver a policy or**
26 **contract described in subsection b. of section 3 and excluded under**
27 **paragraph (1) of subsection c. of section 3 from coverage under this**
28 **act unless the insurer or insurance producer, prior to or at the time**
29 **of delivery, gives the policy or contract holder a separate written**
30 **notice which clearly and conspicuously discloses that the policy or**
31 **contract is not covered by the association. The commissioner may**
32 **by rule further specify the form and content of the notice】** A
33 member insurer shall retain evidence of compliance with subsection
34 b. of this section for so long as the policy or contract for which the
35 notice is given remains in effect.

36 (cf: P.L.1991, c.208, s.17)

37

38 16. Section 18 of P.L.1991, c.208 (C.17B:32A-18) is amended
39 to read as follows:

40 18. a. A member insurer may offset against its premium tax
41 liability, attributable to premiums written in that year, and
42 determined pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1),
43 any assessments for which a certificate of contribution has been
44 issued, pursuant to subsection h. of section 8 of **【this act】** P.L.1991,
45 c.208 (C.17B:32A-8) to the extent of 10% of the amount of those
46 assessments for each of the five calendar years following the second
47 year after the year in which those assessments were paid, except

1 that no member insurer may offset its premium tax liability by more
2 than 20% of its premium tax liability in any one year. If a member
3 insurer should cease doing business in this State, any uncredited
4 assessments may be offset against its premium tax liability for the
5 year in which it ceases to do business in this State.

6 b. **【Any sums which are acquired by member insurers as the**
7 **result of a refund from the association pursuant to subsection f. of**
8 **section 8 of this act, and which have theretofore been offset against**
9 **premium taxes as provided in subsection a. of this section, shall be**
10 **paid by those insurers to the State as the Director of the Division of**
11 **Taxation may require. The association shall notify the**
12 **commissioner and the Director of the Division of Taxation of any**
13 **refunds made】** A member insurer that is exempt from taxes
14 referenced in subsection a. of this section may recoup its
15 assessments by a surcharge on its premiums or by a surcharge on its
16 membership fees (as applicable) in a sum reasonably calculated to
17 recoup the assessments over a reasonable period of time, as
18 approved by the commissioner. Amounts recouped shall not be
19 considered premiums for any other purpose, including the
20 computation of gross premium tax, the medical loss ratio, or
21 insurance producer commission. If a member insurer collects excess
22 surcharges, the member insurer shall remit the excess amount to the
23 association, and the excess amount shall be applied to reduce future
24 assessments in the appropriate account.

25 c. Any sums which are acquired by member insurers as the
26 result of a refund from the association pursuant to subsection f. of
27 section 8 of P.L.1991, c.208 (C.17B:32A-8), and which have
28 theretofore been offset against premium taxes as provided in
29 subsection a. of this section, shall be paid by those member insurers
30 to the State as the Director of the Division of Taxation may require.
31 The association shall notify the commissioner and the Director of
32 the Division of Taxation of any refunds made.

33 d. This section shall not apply in any way to the imposition or
34 collection of, and no offset shall be permitted against, the surtax on
35 premiums authorized pursuant to section 76 of P.L.1990, c.8
36 (C.17:33B-49).

37 (cf: P.L.1991, c.208, s.18)

38

39 17. Section 19 of P.L.1991, c.208 (C.17B:32A-19) is amended
40 to read as follows:

41 19. a. The provisions of **【sections 2 through 18 of this act】**
42 P.L.1991, c.208 (C.17B:32A-1 et seq.) **【shall not apply to any**
43 **insurer which is insolvent or impaired on December 31, 1990,**
44 **except as provided in paragraph (2) of subsection b. of section 3 of**
45 **this act】** prior to the effective date of P.L. _____, c. _____ (C. _____)
46 (pending before the Legislature as this bill) shall apply to all
47 matters relating to any impaired insurer or insolvent insurer as

1 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which
2 the association first became obligated under section 7 of P.L.1991,
3 c.208 (C.17B:32A-7) in effect prior to the effective date of P.L. ,
4 c. (C.) (pending before the Legislature as this bill).

5 b. The provisions of P.L.1991, c.208 (C.17B:32A-1 et seq.) in
6 effect on and after the effective date of P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall apply to all
8 matters relating to any impaired insurer or insolvent insurer as
9 defined in section 4 of P.L.1991, c.208 (C.17B:32A-4) for which
10 the association first became obligated under section 7 of P.L.1991,
11 c.208 (C.17B:32A-7) on or after the effective date of P.L. , c.
12 (C.) (pending before the Legislature as this bill).
13 (cf: P.L.1991, c.208, s.19)

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18. This act shall take effect immediately.

20 Updates “New Jersey Life and Health Insurance Guaranty
21 Association Act” to current standards of National Association of
22 Insurance Commissioners.