

**SENATE, No. 2422**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MAY 9, 2022

**Sponsored by:**  
**Senator NELLIE POU**  
**District 35 (Bergen and Passaic)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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 funds  
21 to carry out the purposes of **[this act]** P.L.1991, c.208 (C.17B:32A-  
22 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  
29 subsection 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:

43 (i) the member insurers which issued the policies or contracts are  
44 domiciled in this State;

**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.

(ii) those member insurers, health service corporations, hospital service corporations, medical service corporations, or health maintenance organizations never held a license or certificate of authority in the states in which those persons reside;

(iii) those states have associations and coverage provisions with respect to residency similar to the association created by **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.); and

(iv) those persons are not eligible for coverage by those associations.

(3) For unallocated annuity contracts specified in subsection b. of this section, paragraphs (1) and (2) of this subsection shall not apply, and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in paragraphs (5) and (6) of this subsection) provide coverage to persons who are the owners of the unallocated annuity contracts:

(a) if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this State; and

(b) issued to or in connection with government lotteries if the owners are residents.

(4) For structured settlement annuities specified in subsection b. of this section, paragraphs (1) and (2) of this subsection shall not apply, and P.L.1991, c.208 (C.17B:32A-1 et seq.) shall (except as provided in paragraphs (5) and (6) of this subsection) provide coverage to a person who is a payee under a structured settlement annuity (or beneficiary of a payee if the payee is deceased) if the payee:

(a) is a resident, regardless of where the contract owner resides;  
or

(b) is not a resident, but only under both of the following conditions:

(i) the contract owner of the structured settlement annuity is a resident or is not a resident but the insurer that issued the settlement annuity is domiciled in New Jersey and the state in which the contract owner resides has an association similar to the association created by P.L.1991, c.208 (C.17B:32A-1 et seq.); and

(ii) the payee (or beneficiary) and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(5) P.L.1991, c.208 (C.17B:32A-1 et seq.) shall not provide coverage to a person:

(a) who is a payee (or beneficiary) of a contract owner resident of this State, if the payee (or beneficiary) is afforded any coverage by the association of another state;

(b) covered under paragraph (3) of this subsection, if any coverage is provided by the association of another state to the person;  
or

(c) who acquires rights to receive payments through a structured settlement factoring transaction as defined in section 5891 of the

1 federal Internal Revenue Code, 26 U.S.C. s.5891(c)(3)(A), regardless  
2 of whether the transaction occurred before or after that section  
3 became effective.

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

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

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

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

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

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

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

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

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

4 (i) the rate of interest determined by subtracting three percentage  
5 points from Moody's Corporate Bond Yield Average averaged for  
6 that same four-year period, or for such lesser period if the policy or  
7 contract was issued less than four years before the association  
8 became obligated, or

9 (ii) the rate of interest specified in the standard valuation law, or  
10 the rules of this State for determining the minimum standard for the  
11 valuation of policies or contracts issued during the year of  
12 insolvency; and

13 (b) on and after the date on which the association becomes  
14 obligated with respect to that policy or contract, exceeds the rate of  
15 interest determined by subtracting four percentage points from  
16 Moody's Corporate Bond Yield Average as most recently available;  
17 except that the limitation of this paragraph shall not preclude the  
18 association from providing more extensive coverage if it is  
19 proceeding under the authority of section 7 of **【this act】** P.L.1991,  
20 c.208 (C.17B:32A-7);

21 (4) any plan or program of an employer, association or similar  
22 entity to provide life, health, or annuity benefits to its employees or  
23 members to the extent that such plan or program is self-funded or  
24 uninsured, including, but not limited to, benefits payable by an  
25 employer, association or similar entity under:

26 (a) a Multiple Employer Welfare Arrangement as defined in the  
27 Employee Retirement Income Security Act of 1974 (29 U.S.C.  
28 s.1002);

29 (b) a minimum premium group insurance plan;

30 (c) a stop-loss group insurance plan; or

31 (d) an administrative services only contract;

32 (5) any portion of a policy or contract to the extent that it provides  
33 dividends or experience rating credits, or provides that any fees or  
34 allowances be paid to any person, including the **【holder】** owner of  
35 the policy or contract, in connection with the service to or  
36 administration of that policy or contract;

37 (6) any policy or contract issued in this State by a member insurer  
38 at a time when it was not licensed or did not have a certificate of  
39 authority to issue that policy or contract in this State;

40 (7) any unallocated annuity contract issued to an employee benefit  
41 plan covered by the Pension Benefit Guaranty Corporation and  
42 whose benefits will be paid under such system; **【and】**

43 (8) any portion of any unallocated annuity contract which is not  
44 issued to or in connection with a specific plan providing benefits to  
45 employees or an association of natural persons;

46 (9) a portion of a policy or contract to the extent it provides for  
47 interest or other changes in value to be determined by the use of an  
48 index or other external reference stated in the policy or contract, but

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

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

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

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

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

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

35 (2) with respect to [any] one [insured individual] life,  
36 regardless of the number of policies or contracts:

37 (a) \$500,000 in life insurance death benefits, but not more than  
38 \$100,000 in net cash surrender and net cash withdrawal values for  
39 life insurance;

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

46 (3) with respect to any one unallocated annuity contract,  
47 \$2,000,000 in benefits; or

(4) with respect to any one group, blanket, or individual accident or health insurance or ~~group, blanket or individual accident or health insurance policy, unlimited benefits~~ or health benefit plan, policy or contract;

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

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

(c) \$500,000 for health benefit plans; provided, however, that in no event shall the association be liable to expend more than \$500,000 in the aggregate with respect to any one individual under this paragraph;

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

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

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

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

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

**[e.] f.** A provider of health care services, in order to receive payment directly from the association upon a claim of the provider against an insured or enrollee, shall agree to forgive the insured of 20% of the obligation which would otherwise be paid by the member insurer had it not been insolvent. The obligations of solvent member

1 insurers to pay all or part of the covered claim are not diminished by  
2 the forgiveness provided in this subsection. The association is not  
3 bound by an assignment of benefits executed with respect to the  
4 coverage provided by the insolvent insurer. The association may  
5 aggregate all claims owed health care providers when negotiating  
6 direct payment of claims of all covered individuals.  
7 (cf: P.L.1991, c.208, s.3)

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

11 4. As used in **[this act]** P.L.1991, c.208 (C.17B:32A-1 et seq.):  
12 "Account" means either of the two accounts created under  
13 subsection b. of section 5 of **[this act]** P.L.1991, c.208 (C.17B:32A-  
14 5).

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

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

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

26 "Commissioner" means the Commissioner of Banking and  
27 Insurance.

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

33 "Covered policy" or "covered contract" means any policy or  
34 contract within the scope of **[this act]** P.L.1991, c.208 (C.17B:32A-  
35 1 et seq.) as provided by section 3 of **[this act]** P.L.1991, c.208  
36 (C.17B:32A-3).

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

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



1 disability income insurance; coverage for on-site medical clinics; or  
2 specified disease, hospital, confinement indemnity, or limited benefit  
3 health insurance if the types of coverage do not provide coordination  
4 of benefits and are provided under separate policies or certificates.

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

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

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

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

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

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

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

38 (5) A mandatory state pooling plan;

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

42 (7) An insurance exchange; **【or】**

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

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

47 **【(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, Inc.,  
3 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 of  
10 the member insurer. The terms owner, contract owner, policyholder,  
11 and policy owner do not include persons with a mere beneficial  
12 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 or  
21 more employers or jointly by one or more employers and one or more  
22 employee organizations, the association, committee, joint board of  
23 trustees, or other similar group of representatives of the parties who  
24 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 not  
31 provided under subsection b. of section 3 of **【this act】** P.L.1991,  
32 c.208 (C.17B:32A-3) except that assessable premium shall not be  
33 reduced as the result of the application of: paragraph (3) of  
34 subsection c. of section 3 relating to interest limitations; or paragraph  
35 (2) of subsection d. of section 3 relating to limitations with respect to  
36 any one insured or enrolled individual. "Premiums" shall not include  
37 any premiums in excess of \$2,000,000 per contract on any  
38 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 the  
45 United States that is a resident of a foreign country or of a United  
46 States possession, territory, or protectorate that does not have an  
47 association similar to the association created by P.L.1991, c.208

1 (C.17B:32A-1 et seq.) shall be deemed a resident of the state of  
2 domicile of the member insurer that issued the policies or 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 to  
14 an individual by an insurer under that contract or certificate; or (2)  
15 any unallocated life insurance or health insurance funding agreement,  
16 where insurance certificates or contracts are not issued to and owned  
17 by individuals, except to the extent of any life insurance or health  
18 insurance benefits guaranteed to an individual by an insurer under  
19 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 the  
25 New Jersey Life and Health Insurance Guaranty Association. All  
26 member insurers shall be and remain members of the association as  
27 a condition of their authority or license to transact insurance, health  
28 service corporation business, hospital service corporation business,  
29 medical service corporation business, or health maintenance  
30 organization business in this State. Any member insurer shall remain  
31 a member insurer for four years after it ceases to hold a certificate of  
32 authority or license. The association shall perform its functions under  
33 the plan of operation established and approved pursuant to section 9  
34 of **【this act】** P.L.1991, c.208 (C.17B:32A-9) and shall exercise its  
35 powers through the board of directors established under section 6 of  
36 **【this act】** P.L.1991, c.208 (C.17B:32A-6). The association shall be  
37 under the immediate supervision of the commissioner and shall be  
38 subject to the applicable provisions of the insurance laws of this  
39 State. Meetings or records of the association may be opened to the  
40 public upon majority vote of the board of directors of the association.

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

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

45 (a) life insurance subaccount;

46 (b) annuity subaccount; and

47 (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 which  
7 shall consist of not less than **【five】** seven nor more than **【nine】**  
8 eleven member insurers serving terms as established in the plan of  
9 operation. The members of the board shall be selected by member  
10 insurers subject to the approval of the commissioner. Vacancies on  
11 the board shall be filled for the remaining period of the term by a  
12 majority vote of the remaining board members, subject to the  
13 approval of the commissioner. To select the initial board of directors,  
14 and initially organize the association, the commissioner shall give  
15 notice to all member insurers of the time and place of the  
16 organizational meeting. In determining voting rights at the  
17 organizational meeting each member insurer shall be entitled to one  
18 vote in person or by proxy. If the board of directors is not selected  
19 within 60 days after notice of the organizational meeting, the  
20 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 members  
26 of the board of directors, but members of the board shall not  
27 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, the  
33 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 policies  
41 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 section,  
7 subject to the conditions therein; or
- 8       (b) provide substitute benefits in lieu of the contractual obligations  
9 of the impaired insurer solely for health insurance claims, periodic  
10 annuity benefit payments, death benefits, supplemental benefits, and  
11 cash withdrawals for policy or contract owners who petition therefor  
12 under claims of emergency or hardship in accordance with standards  
13 proposed by the association and approved by the commissioner.
- 14       (2) The association shall be subject to the requirements of  
15 paragraph (1) of this subsection only if:
- 16       (a) the laws of the impaired insurer's state or country of domicile  
17 provide that, until all payments of, or on account of, the impaired  
18 insurer's contractual obligations by all guaranty associations, along  
19 with all expenses thereof and interest on all such payments and  
20 expenses, shall have been repaid to the guaranty associations or a  
21 plan of repayment by the impaired insurer shall have been approved  
22 by the guaranty associations,
- 23       (i) the delinquency proceeding shall not be dismissed,
- 24       (ii) neither the impaired insurer nor its assets shall be returned to  
25 the control of its shareholders or private management, and
- 26       (iii) it shall not be permitted to solicit or accept new business or  
27 have any suspended or revoked license restored; and
- 28       (b) (i) in the case of a domestic insurer, it has been placed under  
29 an order of receivership or rehabilitation by a court of competent  
30 jurisdiction in this State, or
- 31       (ii) in the case of a foreign or alien insurer, it has been prohibited  
32 from soliciting or accepting new contracts in this State, except as  
33 approved by the commissioner and as part of a plan of rehabilitation  
34 approved by a court of competent jurisdiction.
- 35       (3) (a) The limitations of paragraphs (3) and (4) of subsection c.  
36 of section 3 of this act shall not preclude the association from  
37 providing more extensive coverage or guarantees, if it is proceeding  
38 under the authority of this section and if that additional coverage is  
39 an essential element in allowing a rehabilitation plan to succeed as  
40 determined by the commissioner and a court of competent  
41 jurisdiction.
- 42       (b) The commissioner and the association shall utilize the  
43 authority of this section if a reasonable prospect exists that the  
44 ultimate liabilities to be paid by the association and its member  
45 insurers will be reduced as compared to the present liabilities  
46 incurred if the association were to proceed under paragraph (2) of  
47 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 association  
3 under this act or any right of contract, the association may enter into  
4 agreements with other guaranty associations to secure coordination  
5 between associations and performance by those associations with  
6 respect to policy or contract holders covered by those associations  
7 equivalent to that provided to individuals covered by this act.

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

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

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

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

39 (b) assure payment of the contractual obligations of the insolvent  
40 insurer; and

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

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

46 d. When proceeding under **【subparagraph (b) of paragraph (1)**  
47 **of subsection b. or】** paragraph (2) of subsection c. of this section, the

1 association shall, with respect only to **life and health insurance**  
2 policies or contracts:

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

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

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

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

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

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

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

46 (c) The association may reinsure any alternative or reissued policy  
47 or contract.

1 (5) (a) Alternative policies or contracts adopted by the association  
2 shall be subject to the approval of the commissioner.

3 (b) Alternative policies or contracts shall contain at least the  
4 minimum statutory provisions required in this State and provide  
5 benefits that shall not be unreasonable in relation to the premium  
6 charged under reasonable actuarial assumptions. The association  
7 shall set the premium in accordance with a table of rates which it  
8 shall adopt. The premium shall reflect the amount of insurance or  
9 coverage to be provided and the age and class of risk of each insured  
10 or enrollee.

11 (c) Any alternative policy or contract issued by the association  
12 shall provide coverage of a type similar to that of the policy or  
13 contract issued by the impaired or insolvent insurer, as determined  
14 by the association.

15 (6) If the association elects to reissue terminated coverage at a  
16 premium rate different from that charged under the terminated policy  
17 or contract, the premium shall be actuarially justified and set by the  
18 association in accordance with the amount of insurance or coverage  
19 provided and the age and class of risk, subject to approval of the  
20 commissioner.

21 (7) The association's obligations with respect to coverage under  
22 any policy or contract of the impaired or insolvent insurer or under  
23 any reissued or alternative policy or contract shall cease on the date  
24 that coverage, policy or contract is replaced by another similar  
25 coverage, policy or contract by the **【policyholder】** policy or contract  
26 owner, the enrollee, the association, or the insured.

27 e. When proceeding under **【subparagraph (b) of paragraph (1)**  
28 **of subsection b. or】** subsection c. of this section with respect to any  
29 policy or contract carrying guaranteed minimum interest rates, the  
30 association shall assure the payment or crediting of a rate of interest  
31 at least equal to that specified in paragraph (3) of subsection c. of  
32 section 3 of **【this act】** P.L.1991, c.208 (C.17B:32A-3).

33 f. Nonpayment of premiums within 31 days after the date  
34 required, after effective notice shall have been given of the terms of  
35 any guaranteed, assumed, alternative or reissued policy or contract or  
36 substitute coverage, shall terminate the association's obligations  
37 under that policy, contract or coverage under **【this act】** P.L.1991,  
38 c.208 (C.17B:32A-1 et seq.) with respect to that policy, contract or  
39 coverage, except with respect to any claims incurred or any net cash  
40 surrender value which may be due in accordance with the provisions  
41 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

42 g. Premiums due for coverage after entry of an order of  
43 receivership or liquidation of any insolvent insurer shall belong to,  
44 and be payable at the direction of, the association.

45 h. The protection provided by **【this act】** P.L.1991, c.208  
46 (C.17B:32A-1 et seq.) shall not apply if any guaranty protection is  
47 provided to residents of this State by the law of the domiciliary state



1 or jurisdiction of the impaired or insolvent insurer other than this  
2 State.

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

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

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

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

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

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

44 m. (1) Any person receiving benefits under **[this act]** P.L.1991,  
45 c.208 (C.17B:32A-1 et seq.) shall be deemed to have assigned the  
46 rights under, and any causes of action relating to, the covered policy  
47 or contract to the association to the extent of the benefits received

1 pursuant to **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.),  
2 whether the benefits are payments of or on account of contractual  
3 obligations, continuation of coverage or provision of substitute or  
4 alternative policies, contracts, or coverages. The association may  
5 require an assignment to it of such rights and causes of action by any  
6 payee, policy or contract owner, beneficiary, insured, enrollee, or  
7 annuitant as a condition precedent to the receipt of any right or  
8 benefits conferred by **【this act】** P.L.1991, c.208 (C.17B:32A-1 et  
9 seq.) upon that person.

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

14 (3) In addition to the rights of subrogation contained in paragraphs  
15 (1) and (2) of this subsection, the association shall have all common  
16 law rights of subrogation and any other equitable or legal remedy  
17 which would have been available to the impaired or insolvent insurer  
18 or **【holder of a】** policy or contract owner, beneficiary, enrollee, or  
19 payee with respect to that policy or contract.

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

29 (5) If the preceding provisions of this subsection are invalid or  
30 ineffective with respect to any person or claim for any reason, the  
31 amount payable by the association with respect to the related covered  
32 obligations shall be reduced by the amount realized by any other  
33 person with respect to the person or claim that is attributable to the  
34 policies or contracts (or portion thereof) covered by the association.

35 (6) If the association has provided benefits with respect to a  
36 covered obligation and a person recovers amounts as to which the  
37 association has rights as described in the preceding paragraphs of this  
38 subsection, the person shall pay to the association the portion of the  
39 recovery attributable to the policies or contracts (or portion thereof)  
40 covered by the association.

41 n. The association may:

42 (1) enter into any contracts necessary or proper to carry out the  
43 provisions and purposes of **【this act】** P.L.1991, c.208 (C.17B:32A-1  
44 et seq.);

45 (2) sue or be sued, including taking any legal actions necessary  
46 or proper to recover any unpaid assessments imposed pursuant to

- 1 section 8 of **【this act】** P.L.1991, c.208 (C.17B:32A-8) and to settle  
2 claims or potential claims against it;
- 3 (3) borrow money to effectuate the purposes of **【this act】**  
4 P.L.1991, c.208 (C.17B:32A-1 et seq.). Any notes or other evidence  
5 of indebtedness of the association not in default shall be legal  
6 investments for domestic insurers and may be carried as admitted  
7 assets;
- 8 (4) employ or retain persons necessary to handle the financial  
9 transactions of the association, and to perform other functions as are  
10 necessary or proper under **【this act】** P.L.1991, c.208 (C.17B:32A-1  
11 et seq.);
- 12 (5) take any legal action necessary to avoid payment of improper  
13 claims;
- 14 (6) exercise, for the purposes of **【this act】** P.L.1991, c.208  
15 (C.17B:32A-1 et seq.) and to the extent approved by the  
16 commissioner, the powers of a domestic life insurer or health insurer,  
17 health service corporations, hospital service corporations, medical  
18 service corporations, or health maintenance organizations but in no  
19 case shall the association issue insurance policies or annuity  
20 contracts other than those issued to perform its obligations under  
21 **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.);
- 22 (7) organize itself as a corporation or in other legal form  
23 permitted by the law of the State;
- 24 (8) request information from a person seeking coverage from the  
25 association in order to aid the association in determining its  
26 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.) with respect  
27 to the person, and the person shall promptly comply with the request;
- 28 (9) unless prohibited by law, in accordance with the terms and  
29 conditions of the policy or contract, file for actuarially justified rate  
30 or premium increases for any policy or contract for which it provides  
31 coverage under P.L.1991, c.208 (C.17B:32A-1 et seq.); and
- 32 (10) take other necessary or appropriate action to discharge its  
33 duties and obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.)  
34 or to exercise its powers under P.L.1991, c.208 (C.17B:32A-1 et  
35 seq.).
- 36 o. The association may join an organization of one or more other  
37 state associations of similar purposes, to further the purposes and  
38 administer the powers and duties of the association.
- 39 p. (1) (a) At any time within 180 days of the date of the order  
40 of liquidation, the association may elect to succeed to the rights and  
41 obligations of the ceding member insurer that relate to policies,  
42 contracts, or annuities covered, in whole or in part, by the  
43 association, in each case under any one or more reinsurance contracts  
44 entered into by the insolvent insurer and its reinsurers and selected  
45 by the association. Any such assumption shall be effective as of the  
46 date of the order of liquidation. The election shall be effected by the  
47 association or the National Organization of Life and Health Insurance

1 Guaranty Associations (NOLGHA) on its behalf sending written  
2 notice, return receipt requested, to the affected reinsurers.

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

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

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

15 (c) The following subsubparagraphs shall apply to reinsurance  
16 contracts so assumed by the association:

17 (i) The association shall be responsible for all unpaid premiums  
18 due under the reinsurance contracts for periods both before and after  
19 the date of the order of liquidation, and shall be responsible for the  
20 performance of all other obligations to be performed after the date of  
21 the order of liquidation, in each case which relate to policies,  
22 contracts, or annuities covered, in whole or in part, by the  
23 association. The association may charge policies, contracts, or  
24 annuities covered in part by the association, through reasonable  
25 allocation methods, the costs for reinsurance in excess of the  
26 obligations of the association and shall provide notice and an  
27 accounting of these charges to the liquidator;

28 (ii) The association shall be entitled to any amounts payable by  
29 the reinsurer under the reinsurance contracts with respect to losses or  
30 events that occur in periods after the date of the order of liquidation  
31 and that relate to policies, contracts, or annuities covered, in whole  
32 or in part, by the association, provided that, upon receipt of those  
33 amounts, the association shall be obliged to pay to the beneficiary  
34 under the policy, contracts, or annuity on account of which the  
35 amounts were paid a portion of the amount equal to the lesser of (1)  
36 the amount received by the association; and (2) the excess of the  
37 amount received by the association over the amount equal to the  
38 benefits paid by the association on account of the policy, contracts,  
39 or annuity less the retention of the insurer applicable to the loss or  
40 event.

41 (iii) Within 30 days following the association's election (the  
42 "election date"), the association and each reinsurer under contracts  
43 assumed by the association shall calculate the net balance due to or  
44 from the association under each reinsurance contract as of the  
45 election date with respect to policies, contracts or annuities covered,  
46 in whole or in part, by the association, which calculation shall give  
47 full credit to all items paid by either the member insurer or its receiver  
48 or the reinsurer prior to the election date. The reinsurer shall pay the

1 receiver any amounts due for losses or events prior to the date of the  
2 order of liquidation, subject to any set-off for premiums unpaid for  
3 periods prior to the date, and the association or reinsurer shall pay  
4 any remaining balance due the other, in each case within five days of  
5 the completion of the aforementioned calculation. Any disputes over  
6 the amounts due to either the association or the reinsurer shall be  
7 resolved by arbitration pursuant to the terms of the affected  
8 reinsurance contracts or, if the contract contains no arbitration clause,  
9 as otherwise provided by law. If the receiver has received any  
10 amounts due the association pursuant to subsubparagraph (ii) of this  
11 subparagraph, the receiver shall remit the same to the association as  
12 promptly as practicable.

13 (iv) If the association or receiver, on the association's behalf,  
14 within 60 days of the election date, pays the unpaid premiums due  
15 for periods both before and after the election date that relate to  
16 policies, contracts, or annuities covered, in whole or in part, by the  
17 association, the reinsurer shall not be entitled to terminate the  
18 reinsurance contracts for failure to pay premium insofar as the  
19 reinsurance contracts relate to policies, contracts, or annuities  
20 covered, in whole or in part, by the association, and shall not be  
21 entitled to set off any unpaid amounts due under other contracts, or  
22 unpaid amounts due from parties other than the association, against  
23 amounts due the association.

24 (2) During the period from the date of the order of liquidation  
25 until the election date (or, if the election date does not occur, until  
26 180 days after the date of the order of liquidation):

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

31 (ii) the reinsurer, the receiver and the association shall, to the  
32 extent, practicable, provide each other data and records reasonably  
33 requested.

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

37 (3) If the association does not elect to assume a reinsurance  
38 contract by the election date pursuant to paragraph (1) of this  
39 subsection, the association shall have no rights or obligations, in each  
40 case for periods both before and after the date of the order of  
41 liquidation, with respect to the reinsurance contract.

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

- 1        (a) unless the reinsurer and the assuming insurer agree otherwise,  
2 the reinsurance contract transferred shall not cover any new policies  
3 of insurance, contracts, or annuities in addition to those transferred;
- 4        (b) the obligations described in paragraph (1) of this subsection  
5 shall no longer apply with respect to matters arising after the  
6 effective date of the transfer; and
- 7        (c) notice shall be given in writing, return receipt requested, by  
8 the transferring party to the affected reinsurer not less than 30 days  
9 prior to the effective date of the transfer.
- 10       (5) The provisions of this subsection shall supersede the  
11 provisions of any State law or any affected reinsurance contract that  
12 provides for or requires any payment of reinsurance proceeds, on  
13 account of losses or events that occur in periods after the date of the  
14 order of liquidation, to the receiver of the insolvent insurer or any  
15 other person. The receiver shall remain entitled to any amounts  
16 payable by the reinsurer under the reinsurance contracts with respect  
17 to losses or events that occur in periods prior to the date of the order  
18 of liquidation, subject to applicable setoff provisions.
- 19       (6) Except as otherwise provided in this subsection, nothing in  
20 this subsection shall alter or modify the terms and conditions of any  
21 reinsurance contract. Nothing in this subsection shall abrogate or  
22 limit any rights of any reinsurer to claim that it is entitled to rescind  
23 a reinsurance contract. Nothing in this subsection shall give a  
24 policyholder, contract owner, enrollee, certificate holder, or  
25 beneficiary an independent cause of action against a reinsurer that is  
26 not otherwise set forth in the reinsurance contract. Nothing in this  
27 subsection shall limit or affect the association's rights as a creditor  
28 of the estate against the assets of the estate. Nothing in this subsection  
29 shall apply to reinsurance agreements covering property or casualty  
30 risks.
- 31       q. The board of directors of the association shall have discretion  
32 and may exercise reasonable business judgment to determine the  
33 means by which the association is to provide the benefits of P.L.1991,  
34 c.208 (C.17B:32A-1 et seq.) in an economical and efficient manner.
- 35       r. Where the association has arranged or offered to provide the  
36 benefits of P.L.1991, c.208 (C.17B:32A-1 et seq.) to a covered  
37 person under a plan or arrangement that fulfills the association's  
38 obligations under P.L.1991, c.208 (C.17B:32A-1 et seq.), the person  
39 shall not be entitled to benefits from the association in addition to or  
40 other than those provided under the plan or arrangement.
- 41       s. Venue in a suit against the association arising under P.L.1991,  
42 c.208 (C.17B:32A-1 et seq.) shall be in Monmouth County. The  
43 association shall not be required to give an appeal bond in an appeal  
44 that relates to a cause of action arising under P.L.1991, c.208  
45 (C.17B:32A-1 et seq.).
- 46       t. In carrying out its duties in connection with guaranteeing,  
47 assuming, reissuing, or reinsuring policies or contracts under  
48 subsections a., b., c, or d. of this section, the association may issue

1 substitute coverage for a policy or contract that provides an interest  
2 rate, crediting rate or similar factor determined by use of an index or  
3 other external reference stated in the policy or contract employed in  
4 calculating returns or changes in value by issuing an alternative  
5 policy or contract in accordance with the following provisions:

6 (1) in lieu of the index or external reference provided for in the  
7 original policy or contract, the alternative policy or contract provides  
8 for a fixed interest rate; payment of dividends with minimum  
9 guarantees; or a different method for calculating interest or changes  
10 in value;

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

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

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

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

34  
35 7. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to  
36 read as follows:

37 8. a. For the purpose of providing the funds necessary to carry  
38 out the powers and duties of the association, the board of directors  
39 shall assess the member insurers, separately for each account, at such  
40 time and for such amounts as the board finds necessary. Assessments  
41 shall be due not less than 30 days after prior written notice to the  
42 member insurers and shall accrue interest at the percentage of interest  
43 prescribed in the Rules Governing the Courts of the State of New  
44 Jersey for judgments, awards and orders for the payment of money,  
45 on and after the due date.

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

47 (1) Class A assessments shall be made for the purpose of meeting  
48 administrative and legal costs of the association which are not

1 objected to by the commissioner and other expenses **【and**  
2 examinations conducted under the authority of subsection e. of  
3 section 11 of this act**】**. Class A assessments shall also be made, upon  
4 the request of the commissioner, for the purpose of meeting costs  
5 incurred by or on behalf of the department in the administration of an  
6 insolvent insurer to the extent those costs exceed assets of the  
7 insolvent insurer available for that purpose. Class A assessments  
8 need not be related to a particular impaired or insolvent insurer. The  
9 amount of any Class A assessment shall be determined by the board.

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

21 (3) The amount of Class B assessments for long-term care  
22 insurance written by the impaired or insolvent insurer shall be  
23 allocated according to a methodology included in the plan of  
24 operation and approved by the commissioner. The methodology shall  
25 provide for 50 percent of the assessment to be allocated to accident  
26 and health member insurers and 50 percent to be allocated to life and  
27 annuity member insurers.

28 c. (1) Class B assessments against member insurers for each  
29 account and subaccount shall be in the proportion that the premiums  
30 received on business in this State by each assessed member insurer  
31 on policies or contracts covered by each account for the three most  
32 recent calendar years for which information is available preceding  
33 the year in which the member insurer became impaired or insolvent,  
34 as the case may be, bears to such premiums received on business in  
35 this State for such calendar years by all assessed member insurers.

36 (2) Assessments for funds to meet the requirements of the  
37 association with respect to an impaired or insolvent insurer shall be  
38 made as necessary to implement the purposes of **【this act】** P.L.1991,  
39 c.208 (C.17B:32A-1 et seq.). Classification of assessments under  
40 subsection b. of this section and computation of assessments under  
41 this subsection c. shall be made with a reasonable degree of accuracy,  
42 recognizing that exact determinations may not always be possible.

43 d. The association shall **【exempt,】** abate or defer, in whole or in  
44 part, the assessment of a member insurer if, in the opinion of the  
45 commissioner, payment of the assessment would endanger the ability  
46 of the member insurer to fulfill its contractual obligations or places  
47 the member insurer in an unsafe or unsound financial condition. In



1 the event an assessment against a member insurer is **[exempted,]**  
2 abated or deferred, in whole or in part, the amount by which that  
3 assessment is **[exempted,]** abated or deferred shall be assessed  
4 against the other member insurers in a manner consistent with the  
5 basis for assessments set forth in this section. Once the conditions  
6 that caused a deferral have been removed or rectified, the member  
7 insurer shall pay all assessments that were deferred pursuant to a  
8 repayment plan approved by the commissioner.

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

24 (2) If a one percent assessment for any subaccount of the life  
25 insurance and annuity account in any one year does not provide an  
26 amount sufficient to carry out the responsibilities of the association,  
27 then pursuant to paragraph (1) of subsection c. of this section, the  
28 board shall assess all subaccounts of the life insurance and annuity  
29 account for the necessary additional amount, subject to the maximum  
30 stated in paragraph (1) of this subsection.

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

35 f. The board may, by an equitable method as established in the  
36 plan of operation, refund to member insurers, in proportion to the  
37 contribution of each member insurer to that account, the amount by  
38 which the assets of an account exceed the amount the board, with the  
39 concurrence of the commissioner, finds is necessary to carry out  
40 during the coming year the obligations of the association with respect  
41 to that account, including assets accruing from assignment,  
42 subrogation, net realized gains and income from investments. A  
43 reasonable amount may be retained in any account to provide funds  
44 for the continuing expenses of the association and for future losses.

45 g. Except for that portion of assessments **[which]** that may be  
46 offset against premium taxes pursuant to section 18 of **[this act]**  
47 P.L.1991, c.208 (C.17B:32A-18), it shall be proper for any member

1 insurer, in determining its premium rates and policy owner dividends  
2 as to any kind of insurance, health service corporation business,  
3 hospital service corporation business, medical service corporation  
4 business, or health maintenance organization business within the  
5 scope of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.), to  
6 consider the amount reasonably necessary to meet its assessment  
7 obligations under **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).

8 h. The association shall issue to each member insurer paying an  
9 assessment pursuant to **【this act】** P.L.1991, c.208 (C.17B:32A-1 et  
10 seq.), other than a Class A assessment, a certificate of contribution,  
11 in a form and manner prescribed by the commissioner, for the amount  
12 of the assessment so paid. All outstanding certificates shall be of  
13 equal dignity and priority without reference to amount or date of  
14 issue. A certificate of contribution may be shown by the member  
15 insurer in its financial statement as an asset in such form and manner  
16 and for such amount and period of time as the commissioner may  
17 approve.

18 i. (1) A member insurer that wishes to protest all or part of an  
19 assessment shall pay when due the full amount of the assessment as  
20 set forth in the notice provided by the association. The payment shall  
21 be available to meet association obligations during the pendency of  
22 the protest or any subsequent appeal. Payment shall be accompanied  
23 by a statement in writing that the payment is made under protest and  
24 setting forth a brief statement of the grounds for the protest.

25 (2) Within 60 days following the payment of an assessment under  
26 protest by a member insurer, the association shall notify the member  
27 insurer in writing of its determination with respect to the protest  
28 unless the association notifies the member insurer that additional  
29 time is required to resolve the issues raised by the protest.

30 (3) Within 30 days after a final decision has been made, the  
31 association shall notify the protesting member insurer in writing of  
32 that final decision. Within 60 days of receipt of notice of the final  
33 decision, the protesting member insurer may appeal that final action  
34 to the commissioner.

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

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

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

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

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

3       9. a. (1) The association shall submit to the commissioner a  
4 plan of operation and any amendments thereto necessary or suitable  
5 to assure the fair, reasonable, and equitable administration of the  
6 association. The plan of operation and any amendments thereto shall  
7 become effective upon the commissioner's written approval or at the  
8 expiration of 30 days after submission if it has not been disapproved.

9       (2) If the association fails to submit a suitable plan of operation  
10 within 120 days following the effective date of **【this act】** P.L.1991,  
11 c.208 (C.17B:32A-1 et seq.) or if at any time thereafter the  
12 association fails to submit suitable amendments to the plan, the  
13 commissioner shall adopt such plan or amendments necessary to  
14 effectuate the provisions of **【this act】** P.L.1991, c.208 (C.17B:32A-  
15 1 et seq.). The plan or amendments shall continue in force until  
16 modified by the commissioner or superseded by a plan submitted by  
17 the association and approved by the commissioner.

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

19       c. The plan of operation shall, in addition to requirements  
20 enumerated elsewhere in **【this act】** P.L.1991, c.208 (C.17B:32A-1 et  
21 seq.):

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

23       (2) establish the amount and method of reimbursing members of  
24 the board of directors under subsection c. of section 6 of **【this act】**  
25 P.L.1991, c.208 (C.17B:32A-6);

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

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

30       (5) establish the procedures whereby selections for the board of  
31 directors will be made and submitted to the commissioner;

32       (6) establish any additional procedures for the imposition of  
33 assessments under section 8 of **【this act】** P.L.1991, c.208  
34 (C.17B:32A-8); **【and】**

35       (7) contain additional provisions necessary or proper for the  
36 execution of the powers and duties of the association;

37       (8) establish procedures whereby a director may be removed for  
38 cause, including in the case where a member insurer director becomes  
39 an impaired or insolvent insurer; and

40       (9) require the board of directors to establish a policy and  
41 procedures for addressing conflicts of interests.

42       d. The plan of operation may provide for the delegation of any  
43 or all powers and duties of the association, except those set forth in  
44 paragraph (3) of subsection m. of section 7 of P.L.1991, c.208  
45 (C.17B:32A-7) and section 8 of **【this act】** P.L.1991, c.208  
46 (C.17B:32A-8), to a corporation, association, or other organization  
47 which performs or will perform functions similar to those of the

1 association, or its equivalent, in two or more other states. Such a  
2 corporation, association, or organization shall be reimbursed for any  
3 payments made on behalf of the association and shall be paid for its  
4 performance of any function of the association. A delegation under  
5 this subsection d. shall take effect only with the approval of both the  
6 board of directors and the commissioner, and may be made only to a  
7 corporation, association, or organization which extends protection  
8 not substantially less favorable or effective than that provided by  
9 **【this act】 P.L.1991, c.208 (C.17B:32A-1 et seq.)**.  
10 (cf: P.L.1991, c.208, s.9)  
11

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

14 10. a. In addition to the duties and powers enumerated elsewhere  
15 in **【this act】 P.L.1991, c.208 (C.17B:32A-1 et seq.)**, the  
16 commissioner shall:

17 (1) upon request of the board of directors, provide the association  
18 with a statement of the premiums in this State and any other  
19 appropriate states for each member insurer;

20 (2) when an impairment is declared and the amount of the  
21 impairment is determined, serve a demand upon the impaired insurer  
22 to make good the impairment within a reasonable time. Notice to the  
23 impaired insurer shall constitute notice to its shareholders, if any.  
24 The failure of the impaired insurer to promptly comply with a  
25 demand shall not excuse the association from the performance of its  
26 powers and duties under **【this act】 P.L.1991, c.208 (C.17B:32A-1 et**  
27 **seq.)**;

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

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

39 c. Any action of the board of directors or the association may be  
40 appealed to the commissioner by any member insurer if that appeal  
41 is taken within **【30】 60** days of its receipt of notice of the final action  
42 being appealed. If a member **【company】 insurer** is appealing an  
43 assessment, the amount assessed shall be paid to the association and  
44 made available to meet association obligations during the pendency  
45 of an appeal. If the appeal of an assessment is upheld, the amount  
46 paid in error or excess shall be returned to the member **【company】**

1 insurer. Any final action or order of the commissioner shall be subject  
2 to judicial review in a court of competent jurisdiction.

3 d. The liquidator, rehabilitator, or conservator **【or receiver】** of  
4 any impaired insurer may notify all interested persons of the effect  
5 of **【this act】** P.L.1991, c.208 (C.17B:32A-1 et seq.).  
6 (cf: P.L.1991, c.208, s.10)  
7

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

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

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

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

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

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

24 Notice shall be made in any form the commissioner deems  
25 appropriate, including notification under the auspices of the National  
26 Association of Insurance Commissioners, hereinafter referred to as  
27 NAIC.

28 (2) report to the board of directors when he has taken any of the  
29 actions set forth in paragraph (1) of this subsection or has received  
30 notification from the commissioner of insurance or comparable  
31 official of any other jurisdiction that any such action has been taken  
32 in that jurisdiction. The report to the board of directors shall contain  
33 all significant details of the action taken or of any such notification  
34 received from another jurisdiction.

35 (3) report to the board of directors when he has reasonable cause  
36 to believe from any examination, whether completed or in process,  
37 of any member **【company】** insurer that the **【company】** member  
38 insurer may be an impaired or insolvent insurer. The report and the  
39 information therein shall be kept confidential by the board of  
40 directors.

41 (4) furnish to the board of directors the NAIC Insurance  
42 Regulatory Information System (IRIS) ratios and a list of companies  
43 not included in the ratios developed by the NAIC. The board may  
44 use the information contained therein in carrying out its duties and  
45 responsibilities under this section. The report and information  
46 contained therein shall be kept confidential by the board of directors  
47 until such time as made public by the commissioner or other lawful  
48 authority.

1       b. The commissioner may seek the advice and recommendations  
2 of the board of directors **【or member insurers】** concerning any matter  
3 affecting **【his】** the duties and responsibilities of the commissioner  
4 regarding the financial condition of member insurers and  
5 **【companies】** member insurers, health service corporations, hospital  
6 service corporations, medical service corporations, or health  
7 maintenance organizations seeking admission to transact **【insurance】**  
8 business in this State.

9       c. The board of directors **【or any member thereof】** may, upon  
10 majority vote, make reports and recommendations to the  
11 commissioner upon any matter germane to the solvency, liquidation,  
12 rehabilitation, conservation or receivership of any member insurer or  
13 germane to the solvency of any **【company】** insurer, health service  
14 corporation, hospital service corporation, medical service  
15 corporation, or health maintenance organization seeking to do  
16 **【insurance】** business in this State. Reports and recommendations  
17 made pursuant to this subsection shall not be considered public  
18 documents.

19       d. **【It shall be the duty of the】** The board of directors may, upon  
20 majority vote, **【to】** notify the commissioner of any information  
21 indicating any member insurer may be an impaired or insolvent  
22 insurer.

23       e. **【The board of directors may, upon majority vote, request that**  
24 **the commissioner order an examination of any member insurer which**  
25 **the board in good faith believes may be an impaired or insolvent**  
26 **insurer. Such an examination may be conducted as a NAIC**  
27 **examination or may be conducted by those persons as the**  
28 **commissioner designates. The cost of the examination may be paid**  
29 **by the association and the examination report shall be treated as are**  
30 **other examination reports. In no event shall the examination report**  
31 **be released to the board of directors of the association prior to its**  
32 **release to the public, but this shall not preclude the commissioner**  
33 **from taking action permitted by subsection a. of this section.**

34       The commissioner shall notify the board of directors when the  
35 examination is completed. The request for an examination shall be  
36 kept on file by the commissioner, but it shall not be open to public  
37 inspection, if at all, prior to the release of the examination report to  
38 the public**】** (Deleted by amendment, P.L. , c. (pending before the  
39 Legislature as this bill).

40       f. The board of directors may, upon majority vote, make  
41 recommendations to the commissioner for the detection and  
42 prevention of member insurer insolvencies.

43       **【g.** The board of directors may, at the conclusion of any insurer  
44 insolvency in which the association was obligated to pay covered  
45 claims, prepare a report to the commissioner containing any  
46 information it may have in its possession bearing on the history and  
47 causes of that insolvency. The board shall cooperate with the boards

1 of directors of guaranty associations in other states in preparing a  
2 report on the history and causes of insolvency of a particular insurer,  
3 and may adopt by reference any report prepared by another  
4 association】 (Deleted by amendment, P.L. , c. (pending before  
5 the Legislature as this bill).  
6 (cf: P.L.1991, c.208, s.11)  
7

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

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

15 b. Records shall be kept of all negotiations and meetings in  
16 which the association or its representatives are involved to discuss  
17 the activities of the association in carrying out its powers and duties  
18 under section 7 of **【this act】** P.L.1991, c.208 (C.17B:32A-7).  
19 Records of those negotiations or meetings shall be made public only  
20 upon the termination of a liquidation, rehabilitation, or conservation  
21 **【or receivership】** proceeding involving an impaired or insolvent  
22 insurer, upon the termination of the impairment or insolvency of the  
23 member insurer, or upon the order of a court of competent  
24 jurisdiction.

25 c. For the purpose of carrying out its obligations under **【this act】**  
26 P.L.1991, c.208 (C.17B:32A-1 et seq.), the association shall be  
27 deemed to be a creditor of an impaired or insolvent insurer to the  
28 extent of assets attributable to covered policies or contracts reduced  
29 by any amounts to which the association is entitled as subrogee  
30 pursuant to subsection m. of section 7 of **【this act】** P.L.1991, c.208  
31 (C.17B:32A-7). Assets of an impaired or insolvent insurer  
32 attributable to covered policies or contracts shall be used to continue  
33 all covered policies or contracts and pay all contractual obligations  
34 of the impaired or insolvent insurer as required by **【this act】**  
35 P.L.1991, c.208 (C.17B:32A-1 et seq.). For purposes of this  
36 subsection, assets attributable to covered policies or contracts are that  
37 proportion of the assets which the reserves that should have been  
38 established for such policies or contracts bears to the reserves that  
39 should have been established for all policies or contracts of insurance  
40 or health benefit plans written by the impaired or insolvent insurer.

41 d. As a creditor of the impaired or insolvent insurer as  
42 established in subsection c. of this section and consistent with section  
43 33 of P.L.1992, c.65 (C.17B:32-63), the association and other similar  
44 associations shall be entitled to receive a disbursement of assets out  
45 of the marshaled assets, from time to time as the assets become  
46 available to reimburse it, as a credit against contractual obligations  
47 under P.L.1991, c.208 (C.17B:32A-1 et seq.). If the liquidator has

1 not, within 120 days of a final determination of insolvency of a  
2 member insurer by the receivership court, made an application to the  
3 court for the approval of a proposal to disburse assets out of  
4 marshaled assets to guaranty associations having obligations because  
5 of the insolvency, then the association shall be entitled to make  
6 application to the receivership court for approval of its own proposal  
7 to disburse these assets.

8 (1) Prior to the termination of any receivership, liquidation,  
9 rehabilitation or conservation proceeding, the court may take into  
10 consideration the contributions of the respective parties, including  
11 the association, the shareholders, enrollees, certificate holders, and  
12 **【policyowners】** policy or contract owners of an insolvent insurer,  
13 and any other party with a bona fide interest in making an equitable  
14 distribution of the ownership rights of that insolvent insurer. In  
15 making such a determination, consideration shall be given to the  
16 welfare of the **【policyholders】** policy or contract owners, enrollees,  
17 and certificate holders, and to the reasonable requirements of a  
18 continuing or successor member insurer.

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

26 e. (1) If an order for liquidation or rehabilitation of **【an】** a  
27 member insurer domiciled in this State has been entered, the receiver  
28 appointed under that order shall have a right to recover on behalf of  
29 the member insurer, from any affiliate that controlled it, the amount  
30 of distributions, other than stock dividends paid by the member  
31 insurer on its capital stock, made at any time during the five years  
32 preceding the petition for liquidation or rehabilitation subject to the  
33 limitations of paragraphs (2) through (4) of this subsection.

34 (2) No such distribution shall be recoverable if the member  
35 insurer shows that the distribution was lawful and reasonable when  
36 paid, and that the member insurer did not know and could not  
37 reasonably have known that the distribution might adversely affect  
38 the ability of the member insurer to fulfill its contractual obligations.

39 (3) Any person who was an affiliate that controlled the member  
40 insurer at the time the distributions were paid shall be liable up to the  
41 amount of distributions **【he】** received. Any person who was an  
42 affiliate that controlled the member insurer at the time the  
43 distributions were declared, shall be liable up to the amount of  
44 distributions **【he】** which would have been received if they had been  
45 paid immediately. If two or more persons are liable with respect to  
46 the same distributions, they shall be jointly and severally liable.



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

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

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

10  
11 12. Section 13 of P.L.1991, c.208 (C.17B:32A-13) is amended to  
12 read as follows:

13 13. The association shall be subject to examination and regulation  
14 by the commissioner. The board of directors shall submit to the  
15 commissioner each year, not later than 120 days after the close of the  
16 association's fiscal year, a financial report in a form approved by the  
17 commissioner and a report of its activities during the preceding fiscal  
18 year. Upon request of a member insurer, the association shall provide  
19 a copy of the report.

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

21  
22 13. Section 15 of P.L.1991, c.208 (C.17B:32A-15) is amended to  
23 read as follows:

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

34 b. With respect to any impairment or insolvency of a health  
35 service corporation created pursuant to P.L.1985, c.236 (C.17:48E-1  
36 et seq.), the association shall have no cause of action against any not-  
37 for-profit or nonprofit corporation that is regulated by a law  
38 governing the conduct of not-for-profit or nonprofit corporations,  
39 except in the event of willful or wanton conduct, unless the not-for-  
40 profit or nonprofit corporation is a provider of health care services as  
41 defined in section 1 of P.L.1985, c.236 (C.17:48E-1). For purposes  
42 of this subsection, "willful or wanton conduct" means a course of  
43 action which shows the actual or deliberate intent to cause harm.

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

45  
46 14. Section 16 of P.L.1991, c.208 (C.17B:32A-16) is amended to  
47 read as follows:

1        16. Upon application and notice, all proceedings in which an  
2 insolvent insurer is a party or is obligated to defend a party in any  
3 court in this State shall be stayed for **120** 180 days and any  
4 additional time thereafter as may be determined by the court from the  
5 date the insolvency is determined or any ancillary proceeding is  
6 initiated in the State, whichever is later, to permit proper defense by  
7 the association of all pending causes of action. With respect to any  
8 covered claims arising from a judgment under any decision, verdict  
9 or finding based on the default of the insolvent insurer or its failure  
10 to defend an insured, the association either on its own behalf or on  
11 behalf of the insured may apply to have the judgment, order, decision,  
12 verdict or finding set aside by the court in which the judgment, order,  
13 decision, verdict or finding is entered and shall be permitted to  
14 defend against the claim on the merits.

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

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

19        17. a. No person, including **an** a member insurer, agent or  
20 affiliate of **an** a member insurer or insurance producer shall make,  
21 publish, disseminate, circulate or place before the public or cause  
22 directly or indirectly, to be made, published, disseminated, circulated  
23 or placed before the public, in any newspaper, magazine or other  
24 publication or in the form of a notice, circular, pamphlet, letter or  
25 poster, or over any radio station or television station, or in any other  
26 way, any advertisement, announcement or statement, written or oral,  
27 which uses the existence of the association for the purpose of sales,  
28 solicitation, or inducement to purchase any form of insurance or other  
29 coverage covered by this act P.L.1991, c.208 (C.17B:32A-1 et  
30 seq.). This subsection shall not apply to the department or the  
31 association or to any other entity which does not sell or solicit  
32 insurance or coverage by a health service corporation, hospital  
33 service corporation, medical service corporation, or health  
34 maintenance organization.

35        b. Within 180 days of the effective date of **this act** P.L.1991,  
36 c.208 (C.17B:32A-1 et seq.), the association shall prepare a summary  
37 document describing the general purposes and current limitations of  
38 **the act** P.L.1991, c.208 (C.17B:32A-1 et seq.) which complies with  
39 subsection c. of this section. This document shall be submitted to the  
40 commissioner for approval. Sixty days after receiving that approval,  
41 no member insurer may deliver a policy or contract described in  
42 subsection b. of section 3 of **this act** P.L.1991, c.208 (C.17B:32A-  
43 3) to a policy or contract **holder** owner, certificate holder, or  
44 enrollee unless the document is delivered to the policy or contract  
45 **holder** owner, certificate holder, or enrollee prior to or at the time  
46 of delivery of the policy or contract. The document should also be  
47 available upon request by a policyholder policy or contract owner,

1 certificate holder, or enrollee. The distribution, delivery, contents or  
2 interpretation of this document shall not mean that either the policy  
3 or the contract or the policy or contract owner, certificate holder, or  
4 enrollee thereof would be covered in the event of the impairment or  
5 insolvency of a member insurer. The document shall be revised by  
6 the association as amendments to the act may require. Failure to  
7 receive this document does not give the **【policyholder】** policy or  
8 contract **【holder】** owner, certificate holder, enrollee, or insured any  
9 greater rights than those stated in **【this act】** P.L.1991, c.208  
10 (C.17B:32A-1 et seq.). **【Delivery of the document required by this**  
11 **subsection shall not be required however, in the case of a policy or**  
12 **contract excluded from coverage under this act pursuant to**  
13 **subsection c. of section 3 of this act and with respect to which notice**  
14 **as required by subsection d. of this section has been given.】**

15 c. The document prepared pursuant to subsection b. of this  
16 section shall contain a clear and conspicuous disclaimer on its face.  
17 The commissioner shall promulgate a rule establishing the form and  
18 content of the disclaimer. The disclaimer shall:

19 (1) state the name and address of the association and the  
20 department;

21 (2) prominently warn the policy owner, contract owner,  
22 certificate holder, or **【contract holder】** enrollee that the association  
23 may not cover the policy or contract or, if coverage is available, it  
24 will be subject to substantial limitations and exclusions and  
25 conditioned on continued residence in this State;

26 (3) state that the member insurer and its **【insurance】** producers  
27 are prohibited by law from using the existence of the association for  
28 the purpose of sales, solicitation or inducement to purchase any form  
29 of insurance, health service corporation coverage, hospital service  
30 corporation coverage, medical service corporation coverage, or  
31 health maintenance organization coverage;

32 (4) emphasize that the policy or contract owner, certificate holder,  
33 or **【contract holder】** enrollee should not rely on coverage under the  
34 association when selecting **【an】** a member insurer, health service  
35 corporation, hospital service corporation, medical service  
36 corporation, or health maintenance organization; **【and】**

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

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

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

1 d. **【No insurer or insurance producer may deliver a policy or**  
2 **contract described in subsection b. of section 3 and excluded under**  
3 **paragraph (1) of subsection c. of section 3 from coverage under this**  
4 **act unless the insurer or insurance producer, prior to or at the time of**  
5 **delivery, gives the policy or contract holder a separate written notice**  
6 **which clearly and conspicuously discloses that the policy or contract**  
7 **is not covered by the association. The commissioner may by rule**  
8 **further specify the form and content of the notice】** A member insurer  
9 shall retain evidence of compliance with subsection b. of this section  
10 for so long as the policy or contract for which the notice is given  
11 remains in effect.

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

13  
14 16. Section 18 of P.L.1991, c.208 (C.17B:32A-18) is amended to  
15 read as follows:

16 18. a. A member insurer may offset against its premium tax  
17 liability, attributable to premiums written in that year, and  
18 determined pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1),  
19 any assessments for which a certificate of contribution has been  
20 issued, pursuant to subsection h. of section 8 of **【this act】** P.L.1991,  
21 c.208 (C.17B:32A-8) to the extent of 10% of the amount of those  
22 assessments for each of the five calendar years following the second  
23 year after the year in which those assessments were paid, except that  
24 no member insurer may offset its premium tax liability by more than  
25 20% of its premium tax liability in any one year. If a member insurer  
26 should cease doing business in this State, any uncredited assessments  
27 may be offset against its premium tax liability for the year in which  
28 it ceases to do business in this State.

29 b. **【Any sums which are acquired by member insurers as the**  
30 **result of a refund from the association pursuant to subsection f. of**  
31 **section 8 of this act, and which have theretofore been offset against**  
32 **premium taxes as provided in subsection a. of this section, shall be**  
33 **paid by those insurers to the State as the Director of the Division of**  
34 **Taxation may require. The association shall notify the commissioner**  
35 **and the Director of the Division of Taxation of any refunds made】** A  
36 member insurer that is exempt from taxes referenced in subsection a.  
37 of this section may recoup its assessments by a surcharge on its  
38 premiums or by a surcharge on its membership fees (as applicable)  
39 in a sum reasonably calculated to recoup the assessments over a  
40 reasonable period of time, as approved by the commissioner.  
41 Amounts recouped shall not be considered premiums for any other  
42 purpose, including the computation of gross premium tax, the  
43 medical loss ratio, or insurance producer commission. If a member  
44 insurer collects excess surcharges, the member insurer shall remit the  
45 excess amount to the association, and the excess amount shall be  
46 applied to reduce future assessments in the appropriate account.

1       c. Any sums which are acquired by member insurers as the result  
2 of a refund from the association pursuant to subsection f. of section  
3 8 of P.L.1991, c.208 (C.17B:32A-8), and which have theretofore  
4 been offset against premium taxes as provided in subsection a. of this  
5 section, shall be paid by those member insurers to the State as the  
6 Director of the Division of Taxation may require. The association  
7 shall notify the commissioner and the Director of the Division of  
8 Taxation of any refunds made.

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

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

14  
15       17. Section 19 of P.L.1991, c.208 (C.17B:32A-19) is amended to  
16 read as follows:

17       19. a. The provisions of **【sections 2 through 18 of this act】**  
18 P.L.1991, c.208 (C.17B:32A-1 et seq.) 【shall not apply to any insurer  
19 which is insolvent or impaired on December 31, 1990, except as  
20 provided in paragraph (2) of subsection b. of section 3 of this act】  
21 prior to the effective date of P.L. , c. (C. ) (pending before  
22 the Legislature as this bill) shall apply to all matters relating to any  
23 impaired insurer or insolvent insurer as defined in section 4 of  
24 P.L.1991, c.208 (C.17B:32A-4) for which the association first  
25 became obligated under section 7 of P.L.1991, c.208 (C.17B:32A-7)  
26 in effect prior to the effective date of P.L. , c. (C. ) (pending  
27 before the Legislature as this bill).

28       b. The provisions of P.L.1991, c.208 (C.17B:32A-1 et seq.) in  
29 effect on and after the effective date of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill) shall apply to all matters relating  
31 to any impaired insurer or insolvent insurer as defined in section 4 of  
32 P.L.1991, c.208 (C.17B:32A-4) for which the association first  
33 became obligated under section 7 of P.L.1991, c.208 (C.17B:32A-7)  
34 on or after the effective date of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill).

36 (cf: P.L.1991, c.208, s.19)

37  
38       18. This act shall take effect immediately.

## STATEMENT

42  
43       This bill updates the “New Jersey Life and Health Insurance  
44 Guaranty Association Act” to current standards from the National  
45 Association of Insurance Commissioners.

46       Among the updates in the bill is an expansion of the assessment  
47 base that is to cover the insolvencies of long-term care insurers. All  
48 life and health insurers will be required to assist in covering these

1   insolvencies. Currently, assessments are made against all health  
2   insurance companies, even if the company does not sell long-term  
3   care insurance, but only those life insurance companies that sell long-  
4   term care insurance are assessed.

5       Additionally, this bill sets the cap at \$500,000 on health insurance  
6   benefits issued by the guaranty association in cases of insurer  
7   impairment or insolvency. This cap is proposed for adjustment based  
8   upon changes in the health care costs component of the consumer  
9   price index from January 1, 2022, to the date on which the member  
10   insurer, as defined in the bill, becomes an insolvent insurer.