

CHAPTER 327

AN ACT concerning "the workers' compensation security fund," amending and supplementing various parts of the statutory law, and repealing R.S.34:15-109, R.S.34:15-110 and R.S.34:15-118.

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

C.34:15-105.1 Workers' compensation security fund transferred.

1. The workers' compensation security fund created pursuant to R.S.34:15-105, along with all its functions, powers and duties and all its assets, liabilities and balances, is hereby transferred to the New Jersey Property-Liability Insurance Guaranty Association, established pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

2. R.S.34:15-105 is amended to read as follows:

Workers' compensation security fund.

34:15-105. There is hereby created a fund to be known as "the workers' compensation security fund," for the purpose of assuring to persons entitled thereto the compensation provided by this chapter, R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), or both, for employments insured in insolvent carriers and for the purpose of providing money for first year annual adjustments for benefit payments and supplemental payments during fiscal years 1984 and 1985 provided for by P.L.1980, c.83 (C.34:15-95.4 et al.). Such fund shall be applicable to the payment of valid claims for compensation or death benefits arising from a standard, primary workers' compensation policy heretofore or hereafter made pursuant to this chapter or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), and remaining unpaid, in whole or in part, by reason of the default, after March 26, 1935, of an insolvent carrier. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by carriers, as herein defined, all property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys deposited or invested as herein provided. The fund shall be administered by the New Jersey Property-Liability Guaranty Association in accordance with the provisions of this chapter.

Compensation pursuant to the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), shall be payable under this article only with respect to coverage or risks located or resident in this State. The insolvency, bankruptcy, or dissolution of the insured shall effect a termination of compensation provided under this article for claims arising under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.).

3. R.S.34:15-106 is amended to read as follows:

Annual returns by carriers; "net written premiums" defined.

34:15-106. Every carrier shall annually file with the Commissioner of Banking and Insurance returns, under oath, on a form to be prescribed and furnished by the commissioner, stating the amount of net written premiums on policies issued, renewed or extended by such carrier, to insure payment of compensation pursuant to this chapter or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), as authorized by this article. For the purposes of this article "net written premiums" shall mean

gross written premiums less return premiums on policies returned not taken, and on policies canceled.

4. R.S.34:15-107 is amended to read as follows:

Contributions to the fund.

34:15-107. For the privilege of carrying on the business of workers' compensation insurance in this State, every carrier shall pay into the fund a sum equal to one per cent of its net written premiums as shown by the return hereinbefore prescribed for the period covered by such return.

5. R.S.34:15-111 is amended to read as follows:

Payment of claims; application; recovery.

34:15-111. A valid claim for compensation or death benefits, or installments thereof, heretofore or hereafter made pursuant to this chapter or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), as authorized by this article, which has remained or shall remain due and unpaid for 60 days, by reason of default by an insolvent carrier, shall be paid from the fund in the manner provided in this section. Any person in interest may file with the New Jersey Property-Liability Insurance Guaranty Association an application for payment of compensation or death benefits from the fund on a form to be prescribed and furnished by the New Jersey Property-Liability Insurance Guaranty Association. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application.

Any person recovering under R.S.34:15-103 et seq. shall be deemed to have assigned his rights under the policy to the fund to the extent of his recovery from the fund. Every insured or claimant seeking the protection of R.S.34:15-103 et seq. shall cooperate with the fund to the same extent as that person would have been required to cooperate with the insolvent carrier. The fund shall have no cause of action against the insured employer or the insolvent carrier for any sums it has paid out, except those causes of action that the insolvent carrier would have had if those sums had been paid by the insolvent carrier, including, but not limited to, the right to receive the benefit of, and to enforce any and all obligations on the part of the insured, to either fund directly (or indirectly through a third party administrator), or secure the payment of, compensation due under the policies of the insolvent carrier, to the extent of claims paid. The foregoing vests the fund with an exclusive cause of action against the insured and includes the right to enforce against the insured the rights of the carrier with respect to any obligation of the insured to reimburse the carrier for deductibles or pay claims within a deductible. Further, the fund is vested with a first lien in any collateral provided by the insured to the carrier to secure the insured's performance, to the extent of claims paid by the fund, which lien can be perfected by notice to the liquidator. In the case of an insolvent insurer operating on a plan with an assessment liability, payments of claims of the fund shall not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the fund or its representatives. The court having jurisdiction shall grant a claim priority equal to that to which the claimant would have been entitled in the absence of R.S.34:15-103 et seq. against the assets of the insolvent carrier.

The expenses of the fund or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

Except as otherwise provided in this section, an employer may pay such award or part thereof in advance of payment from the fund and shall thereupon be subrogated to the rights of the employee or other party in interest against the fund to the extent of the amount so paid.

The New Jersey Property-Liability Insurance Guaranty Association shall be entitled to recover the sum of all liabilities of such insolvent carrier assumed by such fund from such carrier, its receiver, liquidator, rehabilitator or trustee in bankruptcy and may prosecute an action or other proceedings therefor. All moneys recovered in any such action or proceedings shall forthwith be placed to the credit of the fund to reimburse the fund to the extent of the moneys so recovered and paid.

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

C.17:30A-2 Payment of covered claims.

2. a. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, to minimize financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, to provide an association to assess the cost of such protection among insurers, and to provide a mechanism to run off, manage, administer and pay claims asserted against the Unsatisfied Claim and Judgment Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), the Market Transition Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), and "the workers' compensation security fund," created pursuant to R.S.34:15-105.

b. This act shall apply to all kinds of direct insurance, except life insurance, accident and health insurance, workers' compensation insurance, except as provided by P.L.2009, c.327 (C.34:15-105.1 et al.), title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

C.17:30A-2.2 Findings, declarations relative to transfer, consolidation of "the workers' compensation security fund."

7. The Legislature finds and declares that:

a. It is in the public interest to authorize the transfer and consolidation of compatible operations of "the workers' compensation security fund" to the New Jersey Property-Liability Insurance Guaranty Association.

b. Following the transfer to the New Jersey Property-Liability Insurance Guaranty Association of its respective management, administrative and claim functions, "the workers' compensation security fund" shall continue to exist as a separate legal entity subject to the provisions of P.L.2009, c.327 (C.34:15-105.1 et al.).

c. The New Jersey Property-Liability Insurance Guaranty Association will administer the obligations of "the workers' compensation security fund" pursuant to R.S.34:15-105 et seq., and take over all governance, administrative and financial functions of "the workers' compensation security fund," including the claim payment function.

d. The New Jersey Property-Liability Insurance Guaranty Association is formally designated as the servicing facility for several statutory entities for which it currently provides administrative services and also for "the workers' compensation security fund."

8. Section 6 of P.L.1974, c.17 (C.17:30A-6) is amended to read as follows:

C.17:30A-6 New Jersey Property-Liability Insurance Guaranty Association.

6. There is created a private, nonprofit, unincorporated, legal entity to be known as the New Jersey Property-Liability Insurance Guaranty Association. All insurers defined as member insurers in section 5 shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 9 and shall exercise its powers through a board of directors established under section 7.

The association is also authorized and shall have all of the powers necessary and appropriate for the management and administration of the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund, in accordance with the provisions of the "New Jersey Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et seq.).

The association is also authorized and shall have all of the powers necessary and appropriate for the management and administration of the affairs of, and the payment of valid claims asserted against: the Unsatisfied Claim and Judgment Fund, created pursuant to the provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); the Market Transition Facility created pursuant to the provisions of section 88 of P.L.1990, c.8 (C.17:33B-11); and "the workers' compensation security fund" created pursuant to R.S.34:15-105.

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

C.17:30A-8 Association's obligations, powers and duties.

8. a. The association shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred prior to or 90 days after the determination of insolvency, or before the policy expiration date if less than 90 days after said determination, or before the insured replaces the policy or causes its cancellation, if he does so within 90 days of the determination, except that in the case of private passenger automobile insurance, the commissioner may, depending upon factors such as the level of that insurance written by the insolvent insurer, the volume of claims arising under that insurance, and conditions currently relating to the voluntary market for that insurance in this State, order the association to treat all or a portion of claims arising under that insurance as covered claims if they are incurred prior to or after the determination of insolvency, but before the policy expiration date or the date upon which the insured replaces the policy or causes its cancellation, and otherwise qualify as covered claims under the act. That obligation shall include only that amount of each covered claim which is less than \$300,000.00 per claimant and subject to any applicable deductible and self-insured retention contained in the policy, except that the \$300,000.00 limitation shall not apply to a covered claim arising out of insurance coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4), or to a valid claim for compensation or death benefits arising out of workers' compensation insurance coverage under R.S.34:15-1 et seq. or under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.). In the case of benefits payable under subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for payment of benefits in an amount not to exceed the amount set forth in section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of workers' compensation

claims, the association shall administer the payment of valid claims with respect to the injury or death of workers under R.S.34:15-1 et seq., or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), arising from insurance coverage of risks located or resident in this State, as provided in R.S.34:15-105 and secured through a standard, primary workers' compensation policy. The commissioner may pay a portion of or defer the association's obligations for covered claims based on the monies available to the association. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the limits of liability stated in the policy of the insolvent insurer from which the claim arises. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim statutory limit or the applicable policy limit;

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

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

- (a) The obligations of the association under paragraphs (1) and (11) of this subsection;
- (b) The expenses of handling covered claims;
- (c) The cost of examinations under section 13; and
- (d) Other expenses authorized by this act.

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

Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer of the association may be assessed pursuant to this paragraph (3) in any year in an amount greater than 2% of that member insurer's net direct written premiums for the calendar year preceding the assessment with regard to the association's obligation to pay covered claims and related expenses arising under coverages issued by insolvent insurers pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

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

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

were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

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

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer. The association is designated as a servicing facility for the administration of claim obligations of: (a) the New Jersey Surplus Lines Insurance Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance Association; (c) the Unsatisfied Claim and Judgment Fund; and (d) "the workers' compensation security fund." The association may also be designated or may contract as a servicing facility for any other entity which may be recommended by the association's board of directors and approved by the commissioner;

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

(8) Make loans to the New Jersey Surplus Lines Insurance Guaranty Fund, the Unsatisfied Claim and Judgment Fund, and "the workers' compensation security fund" in such amounts and on such terms as the board of directors may determine are necessary or appropriate to effectuate the purposes of P.L.1974, c.17 (C.17:30A-1 et seq.), P.L.1984, c.101 (C.17:22-6.70 et seq.), P.L.1952, c.174 (C.39:6-61 et seq.) and R.S.34:15-103 et seq. in accordance with the plan of operation; provided, however, no such loan transaction shall be authorized to the extent the federal tax exemption of the association or any entity for which it serves as administrator would be withdrawn or the association or any such serviced entity would otherwise incur any federal tax or penalty as a result of such transaction;

(9) (Deleted by amendment, P.L.2004, c.175.)

(10) (Deleted by amendment, P.L.2004, c.175.)

(11) Reimburse an insurer for medical expense benefits in excess of \$75,000 per person per accident as provided in section 2 of P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an automobile insurance policy issued prior to January 1, 2004;

(12) Undertake all of the management, administrative, and claims activities of the Unsatisfied Claim and Judgment Fund, created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), the Market Transition Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11) and "the workers' compensation security fund," created pursuant to R.S.34:15-105.

b. The association may:

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

(2) Borrow and separately account for funds from any source, including, but not limited to, the New Jersey Surplus Lines Insurance Guaranty Fund, the Unsatisfied Claim and Judgment Fund, and "the workers' compensation security fund," in such amounts and on such terms, as the board of directors may determine are necessary or appropriate to effectuate the purpose of this act in accordance with the plan of operation; provided, however, no such borrowing transaction shall be authorized to the extent the federal tax exemption of the association or any entity for which it serves as administrator would be withdrawn or the association or any such serviced entity would otherwise incur any federal tax or penalty as a result of such transaction;

- (3) Sue or be sued;
- (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act;
- (5) Perform such other acts as are necessary or proper to effectuate the purpose of this act;
- (6) Refund to the member insurers in proportion of the contribution of each member insurer that amount by which the assets exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities, as estimated by the board of directors for the coming year.

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

C.17:30A-9 Plan of operation.

9. a. (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner;

(2) If the association fails to submit a plan of operation acceptable to the commissioner within 90 days following the effective date of this act, or if at any time thereafter the association fails to submit an acceptable amendment to the plan, the commissioner shall, after notice and hearing adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

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

c. The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the association under section 8 of this act will be performed;

(2) Establish procedures for handling assets of the association;

(3) Establish the amount and method of reimbursing members of the board of directors under section 7 of this act;

(4) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association by the receiver or liquidator;

(5) Establish regular places and times for meetings of the board of directors;

(6) Establish procedures for records to be kept in all financial transactions of the association, its agents, and the board of directors;

(7) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(8) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

(10) Establish procedures for the transition and consolidation of compatible functions of the Unsatisfied Claim and Judgment Fund, the New Jersey Automobile Full Insurance Underwriting Association, the Market Transition Facility, and "the workers' compensation

security fund" in order to eliminate redundant operational activities and promote greater efficiencies in claims handling and other operations;

(11) Establish procedures as necessary or proper to finance the operation of and account for receipts and disbursements as well as other financial transactions involving the Unsatisfied Claim and Judgment Fund, the New Jersey Automobile Full Insurance Underwriting Association, the Market Transition Facility, and "the workers' compensation security fund";

(12) Create such advisory boards as necessary or proper to assist in the administration and management of the operations of the Unsatisfied Claim and Judgment Fund.

d. The plan of operation may provide that any or all powers and duties of the association except those under sections 8a.(3) and 8b.(2), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of the functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Repealer.

11. R.S.34:15-109, R.S.34:15-110, and R.S.34:15-118 through 34:15-120 are repealed.

12. This act shall take effect on July 1, 2009.

Approved January 18, 2010.