

[First Reprint]

ASSEMBLY, No. 4110

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JUNE 13, 2011

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

Assemblywoman DENISE M. COYLE

District 16 (Morris and Somerset)

SYNOPSIS

Revises method of regulation and collection of surplus lines insurance premium taxes.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 23, 2011.



(Sponsorship Updated As Of: 6/17/2011)

1 AN ACT concerning certain taxes on surplus lines insurance and
2 amending and supplementing P.L.1960, c.32.

3

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

6

7 1. Section 7 of P.L.1960, c.32 (C.17:22-6.41) is amended to
8 read as follows:

9 7. As used in this surplus lines law:

10 (a) "Surplus lines agent" means an individual licensed as **[an]** a
11 surplus lines insurance producer with surplus lines authority as
12 provided in **[P.L.1987, c.293 (C.17:22A-1 et seq.)]** P.L.2001, c.210
13 (C.17:22A-26 et seq.) to handle the placement of insurance
14 coverages on behalf of unauthorized insurers.

15 (b) "Surplus lines insurer" means an unauthorized insurer in
16 which an insurance coverage is placed or may be placed under this
17 surplus lines law.

18 (c) To "export" means to place in an unauthorized insurer under
19 this surplus lines law, insurance covering a subject of insurance
20 resident, located, or to be performed in New Jersey.

21 (d) "Commissioner" means the Commissioner of Banking and
22 Insurance of the State of New Jersey.

23 (e) "Certificate of insurance" means permanent evidence of
24 insurance on a form approved by the commissioner and issued by a
25 surplus lines agent who has filed evidence of his binding authority
26 with the commissioner on behalf of an alien insurer. When issued
27 other than on behalf of an alien insurer, an initial certificate of
28 insurance will be treated as temporary evidence of insurance,
29 pending the issuance of a policy. "Certificate of insurance" also
30 means evidence of a renewal of that insurance provided: (1) there
31 is no change in the terms or amounts of coverage; (2) the coverage
32 is still eligible for export; and (3) the insured may request the
33 issuance of a new policy.

34 (f) "Cover note," "binder" or "confirmation of insurance,"
35 means temporary evidence of insurance, to be replaced by a policy
36 or certificate of insurance.

37 (g) "Home state" means,

38 (1) Except as provided in ¹[paragraphs (4) and (5)] paragraph
39 (2)¹ of this subsection, the term "home state" means, with respect
40 to an insured:

41 (i) the state in which an insured maintains its principal place of
42 business or, in the case of an individual, the individual's principal
43 residence; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 23, 2011.

1 (ii) if 100 percent of the insured risk is located out of the state
2 referred to in subparagraph (i) of this paragraph, the state to which
3 the greatest percentage of the insured's taxable premium for that
4 insurance contract is allocated.

5 (2) '["Principal place of business" means, with respect to
6 determining the home state of the insured:

7 (i) the state in which the insured maintains its headquarters and
8 where the insured's high-level officers direct, control and
9 coordinate the business activities;

10 (ii) if the insured's high-level officers direct, control and
11 coordinate the business activities in more than one state, the state in
12 which the greatest percentage of the insured's taxable premium for
13 that insurance contract is allocated; or

14 (iii) if the insured maintains its headquarters or the insured's
15 high-level officers direct, control and coordinate the business
16 activities outside any state, the state to which the greatest
17 percentage of the insured's taxable premium for that insurance
18 contract is allocated.

19 (3) "Principal residence" means, with respect to determining the
20 home state of the insured:

21 (i) the state in which the insured resides for the greatest number
22 of days during a calendar year; or

23 (ii) if the insured's principal residence is located outside any
24 state, the state to which the greatest percentage of the insured's
25 taxable premium for that insurance contract is allocated.

26 (4)]¹ If more than one insured from an affiliated group are
27 named insureds on a single nonadmitted insurance contract, the
28 term "home state" means the home state, as determined pursuant to
29 subparagraph (i) of paragraph (1) of this subsection, of the member
30 of the affiliated group that has the largest percentage of premium
31 attributed to it under that insurance contract.

32 ¹[(5) If the group policyholder pays 100 percent of the premium
33 from its own funds, the term "home state" means the home state, as
34 determined pursuant to subparagraph (i) of paragraph (1) of this
35 subsection, of the group policyholder. If the group policyholder
36 does not pay 100 percent of the premium from its own funds, the
37 term "home state" means the home state, as determined pursuant to
38 subparagraph (i) of paragraph (1) of this subsection, of the group
39 member.]¹

40 (cf: P.L.1996, c.69, s.1)

41
42 2. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to
43 read as follows:

44 25. The premiums charged for surplus lines coverages are
45 subject to a premium receipts tax of 5% of all gross premiums less
46 any return premiums charged for such insurance. The surplus lines
47 agent shall collect from the insured, either directly or through the
48 originating broker, the amount of the tax, in addition to the full

1 amount of the gross premium charged by the insurer for the
2 insurance; provided, however, that the tax on any unearned portion
3 of the premium shall be returned to the policyholder by the surplus
4 lines agent. The surplus lines agent is prohibited from absorbing
5 such tax, or, as an inducement for insurance or for any other reason,
6 rebating all or any part of such tax or of his commission.

7 The surplus lines agent shall forward to the commissioner
8 together with his quarterly report submitted pursuant to section 24
9 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the
10 premium receipts tax due for that period made out to "the State of
11 New Jersey," except that where the policies cover fire insurance on
12 property in any municipality or portion of a township, or fire
13 district in this State, which now has or may hereafter have, a duly
14 incorporated firemen's relief association, 3% of the premium
15 receipts tax covering such insurance shall be paid to the treasurer of
16 the New Jersey State Firemen's Association and the remaining 2%
17 of the premium receipts tax shall be forwarded to the commissioner.

18 The tax imposed hereunder, if delinquent, shall be subject to the
19 provisions of R.S.54:49-3 and R.S.54:49-4.

20 The check covering taxes paid under the provisions of this act
21 shall be forwarded by the commissioner to the Director of the
22 Division of Taxation and that portion of the premiums representing
23 fire insurance shall be distributed by him in the amount now or
24 hereafter provided by law as to taxes collected by him from fire
25 insurance companies of other states and foreign countries. The
26 commissioner shall ascertain and report to the Director of the
27 Division of Taxation all facts necessary to enable the director to
28 ascertain, fix and collect the amount of the tax to be paid by each
29 licensee subject thereto under this act.

30 If a surplus lines policy covers risks or exposures [only partially
31 in this State, the tax payable shall be computed on the portion of the
32 premium which is properly allocable to the risks or exposures
33 located] in this State and other states, where this State is the home
34 state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the
35 tax payable pursuant to this section shall be based on the total
36 United States premium for the applicable policy.

37 This section does not apply as to insurance of or with respect to
38 insurance of risks of the State Government or its agencies, or of any
39 county or municipality or of any agency thereof.

40 (cf: P.L.2009, c.75, s.4)

41

42 3. Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to
43 read as follows:

44 30. Every insured who in this State procures or causes to be
45 procured or continues or renews insurance with an unauthorized
46 foreign or alien insurer, or any insured or self-insurer who procures
47 or continues excess loss, catastrophe or other insurance, upon a
48 subject of insurance resident, located or to be performed within this

1 State, other than insurance procured through a surplus lines agent
2 pursuant to the surplus lines law of this State or exempted from tax
3 under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30
4 days after the date such insurance was so procured, continued, or
5 renewed, file a report of the same with the commissioner in writing
6 and upon forms designated by the commissioner and furnished to
7 such an insured upon request. The report shall show the name and
8 address of the insured or insureds, name and address of the insurer,
9 the subject of the insurance, a general description of the coverage,
10 the amount of premium currently charged therefor, and such
11 additional pertinent information as is reasonably requested by the
12 commissioner.

13 Any insurance in an unauthorized insurer procured through
14 negotiations or an application, in whole or in part occurring or made
15 within or from within this State, or for which premiums in whole or
16 in part are remitted directly or indirectly from within this State,
17 shall be deemed to be insurance procured, or continued or renewed
18 in this State within the intent of this section.

19 There is hereby levied upon the obligation, chose in action, or
20 right represented by the premium charged for such insurance, a tax
21 at the rate of 5% of the gross amount of such premium less any
22 return premiums charged for such insurance. Within 30 days after
23 the insurance was so procured, continued or renewed, and
24 coincidentally with the filing with the commissioner of the report
25 provided for in this section, the insured shall pay the amount of the
26 tax to the commissioner, who, after reviewing the above report,
27 shall turn over the amount of the tax to the Director of the Division
28 of Taxation along with a summary of the facts necessary to enable
29 the director to ascertain and fix the proper amount of the tax, except
30 that where the policies cover fire insurance on property in any
31 municipality or portion of a township, or fire district in this State,
32 which now has or may hereafter have, a duly incorporated firemen's
33 relief association, 3% of the premium receipts tax covering such
34 insurance shall be paid to the treasurer of the New Jersey State
35 Firemen's Association and the remaining 2% of the premium
36 receipts tax shall be forwarded to the commissioner.

37 If the insured fails to withhold from the premium the amount of
38 tax herein levied, the insured shall be liable for the amount thereof
39 and shall pay the same to the commissioner within the time
40 specified in this section.

41 If a surplus lines policy covers risks or exposures in this State
42 and other states, where this State is the home state, as defined in
43 section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant
44 to this section shall be based on the total United States premium for
45 the applicable policy.

46 The tax imposed hereunder if delinquent shall be subject to the
47 provisions of R.S.54:49-3 and R.S.54:49-4.

1 The tax shall be collectible from the insured by civil action
2 brought by the commissioner.

3 The amount of taxes paid to the Director of the Division of
4 Taxation under the provisions of this section on premiums for fire
5 insurance shall be distributed by him in the manner now or hereafter
6 provided by law as to taxes collected by him from fire insurance
7 companies of other states and foreign countries.

8 This section does not abrogate or modify, and shall not be
9 construed or deemed to abrogate or modify, any provision of
10 section 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding
11 unauthorized insurer prohibited; section 4 of P.L.1960, c.32
12 (C.17:22-6.38), penalty for representing unauthorized insurer; or
13 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized
14 insurers prohibited; or any other provision of this Title.

15 This section does not apply as to life or disability insurances.
16 (cf: P.L.2009, c.75, s.5)

17

18 4. (New section) a. Notwithstanding the provisions of sections
19 24, 25 or 30 of P.L.1960, c.32 (C.17:22-6.58, C.17:22-6.59 or
20 C.17:22-6.64) or any other law to the contrary, the commissioner is
21 authorized to enter into, modify and to terminate this State's
22 participation in one or more compacts or agreements that establish
23 procedures for the reporting, payment, collection and allocation,
24 among the other states participating in those compacts or
25 agreements, the premium taxes for multi-state risks paid to this
26 State as the home state pursuant to sections 25 or 30 of P.L.1960, c.
27 32 (C.17:22-6.59 and C.17:22-6.64) or paid to any other state as
28 home state as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41)
29 on a risk which is resident or located in this State. The compacts or
30 agreements may address any matters necessary to facilitate the
31 reporting, payment, collection and allocation of premium taxes on
32 multi-state risks, including, but not limited to:

33 (1) A method and formula for that allocation;

34 (2) Establishment of uniform requirements, forms and
35 procedures that facilitate the reporting, payment, collection and
36 allocation of premium taxes on multi-state risks;

37 (3) Establishment of a clearinghouse to facilitate the receipt and
38 distribution of premium taxes and transaction data related to multi-
39 state risks; and

40 (4) The authority to collect and distribute taxes based on a
41 single home state rate as well as the rates of other states.

42 b. In determining whether to enter into one more compacts or
43 agreements, the commissioner shall consider:

44 (1) The efficiencies to be achieved in the reporting, payment,
45 collection and allocation of premium taxes on surplus lines
46 insurance;

1 (2) The amount of revenue to be generated through participation
2 in any such compacts or agreements. The commissioner may
3 consult with the State Treasurer in making this determination; and

4 (3) Any other material factor relevant to the reporting, payment,
5 collection and allocation of premium taxes on surplus lines
6 insurance.

7
8 5. (New section) Notwithstanding any other law to the
9 contrary, the commissioner is authorized to enter into, modify and
10 to terminate this State's participation in one or more compacts or
11 agreements necessary to implement the federal "Nonadmitted and
12 Reinsurance Reform Act of 2010," Pub.L.111-203 (15 U.S.C. 8201
13 et seq.), as authorized by that act, including, but not limited to, the
14 imposition of eligibility requirements or establishment of eligibility
15 criteria for nonadmitted surplus lines insurers.

16
17 6. (New section) The commissioner, pursuant to the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.), may adopt such rules and regulations as may be necessary to
20 effectuate the purposes of this act.

21
22 7. This act shall take effect on ¹~~September 1, 2011~~ July 21,
23 2011¹, but the commissioner may take any action in advance
24 thereof to enter into one or more compacts or agreements as set
25 forth in sections 4 or 5 of this act, and may take anticipatory
26 administrative action in advance thereof as shall be necessary for
27 the implementation of this act.