

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1572

STATE OF NEW JERSEY

DATED: MARCH 4, 1996

The Assembly Insurance Committee reports favorably Assembly Bill No. 1572.

This bill modifies "the surplus lines law" by: increasing required capital and surplus requirements for eligible surplus lines insurers; increasing the amount of United States trust funds required of alien insurers (those domiciled in other countries) for eligibility; authorizing the Commissioner of Insurance to recognize the financial quality of reinsurance maintained by alien insurers when those alien insurers are on the approved list of the National Association of Insurance Commissioners (NAIC); and eliminating certain regulatory restrictions that currently impede access to the surplus lines market.

This bill increases the amount of trust funds required to be maintained in the United States by an alien insurer for the protection of its policyholders in the United States from \$1.5 million to \$2.5 million and, in addition, allows the commissioner to require an alien insurer to deposit securities in New Jersey in an amount deemed appropriate by the commissioner as a condition of maintaining its eligibility status in New Jersey. This increase in the trust fund amount conforms with the current requirements of the NAIC. The bill increases the required capital and surplus requirements for eligible surplus lines insurers to the NAIC's current minimum of \$15 million. This minimum capital and surplus requirement is phased in over three-year period for current eligible surplus lines insurers. The bill also increases the minimum amounts of net assets and liquid assets required for ineligible surplus lines insurers (insurers with which risks may be placed when coverage is not available from eligible surplus lines insurers) from \$500,000 and \$300,000 to \$5 million and \$1.5 million, respectively.

When an insurance risk is placed with an ineligible surplus lines insurer, the bill requires that the insured be notified that insurance placed with that ineligible surplus lines insurer is not covered by the New Jersey Property-Liability Insurance Guaranty Association or the New Jersey Surplus Lines Insurance Guaranty Fund, which only apply to insurance placed with admitted insurers or eligible surplus lines insurers.

The bill allows eligible alien surplus lines insurers to take credit for

their reinsurance if they are listed by the International Insurers Department (IID) of the NAIC, and provide annually to the commissioner the insurer's current NAIC filing concerning their ceded reinsurance and such other information concerning ceded reinsurance that the IID or the commissioner may require.

The bill eliminates the following requirements: that the commissioner approve an agency agreement under which a surplus lines insurer confers binding authority on a surplus lines agent and that any agreement between a surplus lines agent delegating his binding authority to any other agent be approved by the commissioner.

Current law provides that the full amount of insurance must not be procurable to be eligible for export and then only that amount in excess of the amount procurable may be exported. This bill provides that any unprocurable coverage may be exported along with any associated commercial general liability and commercial property coverages whether procurable or not. Current law also provides that the premium rate at which the coverage is exported cannot be lower than the lowest rate which has been filed by or on behalf of any authorized insurer. The bill adds a provision to provide that any reduction in coverage or limits as compared to policies filed by authorized insurers may be exported at a commensurate reduction in premium rate. Current law further provides that the policy form under which insurance is exported may not provide coverage different from similar policies on file and in actual use in the State by a majority of the authorized insurers. The bill requires that a surplus lines insurance policy provide coverage under substantially the same terms and conditions as similar policies on file and in current use in the admitted market for the same lines of insurance. However, a surplus lines agent may file a policy form which deviates from forms approved in the admitted market if the modification: (1) is reasonable giving consideration to past and prospective loss experience of the risk or risks to be insured and the modification facilitates the availability of coverage for such risk or risks which coverage would otherwise not be available at a reasonable cost; or (2) renders the form unique and designed for use with respect to a particular subject of insurance. Any such policy form must be filed, at least 30 days before it is used, with the commissioner, together with a statement of the deviation. If the form does not meet the criteria for such deviation, the commissioner may order the form be disapproved or withdrawn.

The current law requires both the surplus lines agent and the broker to file affidavits with the commissioner concerning efforts to place coverage with authorized insurers. Because the broker is the party who actually makes the effort to place coverage with authorized insurers, the bill requires him to continue to execute the affidavit (or certification) concerning the effort, but the document is to be submitted to the surplus lines agent and maintained in both the broker's and agent's files, available for inspection by the commissioner for five years.

The bill reflects the current practice of surplus lines premium taxes being collected initially from the insured by the originating broker, who in turn remits those taxes to the surplus lines agent, who then forwards those taxes to the commissioner.

The bill provides that the late filing and late payment of the taxes on the premiums for surplus lines coverages are subject to the interest and penalties for such violations under the State Tax Uniform Procedure Law. In addition, the maximum penalties for violations of "the surplus lines law" are increased from \$1,000 to \$2,500 for a first offense and from \$2,000 to \$5,000 for each succeeding offense.

Under current law surplus lines agents and limited insurance representatives must have a bona fide office. This bill defines "bona fide office."

The bill limits the fees that may be charged by surplus lines agents to an originating broker in connection with a contract of surplus lines insurance. Such fees may not exceed \$50 and the costs incurred for services performed by an unrelated firm or person, such as inspection services.

Under the bill, the commissioner becomes the irrevocable agent to receive service of process on behalf of a surplus lines insurer.

The definition of "certificate of insurance" is modified to recognize the current practice by surplus lines insurers and agents of issuing renewal certificates as evidence of continued coverage under a surplus lines insurance policy if there is no change in the terms or amounts of the coverage.

The bill amends "the surplus lines law" and the Unauthorized Insurers' Process Act to clarify that eligible surplus lines insurers are not subject to the provisions of the Unauthorized Insurers' Process Act. The provisions of "the surplus lines law" currently referenced in the exemption section of the Unauthorized Insurers' Process Act were repealed in a prior revision of "the surplus lines law." This change makes clear that eligible surplus lines insurers are not required to deposit cash, securities or a bond with the clerk of a court pursuant to section 2 of P.L.1952, c.330 (C.17:51-2) when sued in this State as a precondition to filing any pleading or other papers in an action.

Finally, the bill repeals section 17 of P.L.1960, c.32 (C.17:22-6.51) which concerns the filing of surplus lines policies with the commissioner and is no longer necessary because of other provisions in the bill.