

CHAPTER 69

AN ACT concerning surplus lines insurers, amending P.L.1952, c.330 and P.L.1987, c.293, amending and supplementing P.L.1960, c.32, and repealing section 17 of P.L.1960, c. 32.

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

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

C.17:22-6.41 Definitions relative to surplus lines insurers.

7. As used in this surplus lines law:

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

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

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

(d) "Commissioner" means the Commissioner of Insurance of the State of New Jersey.

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

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

2. Section 8 of P.L.1960, c.32 (C.17:22-6.42) is amended to read as follows:

C.17:22-6.42 Procurement of surplus line coverages; conditions.

8. If certain insurance coverages of subjects resident, located, or to be performed in this State cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(a) The insurance must be eligible for export under section 9 of P.L.1960, c.32 (C.17:22-6.43);

(b) The insurer must be an eligible surplus lines insurer under section 11 of P.L.1960, c.32 (C.17:22-6.45);

(c) The insurance must be so placed through a licensed New Jersey surplus lines agent whose office and records are maintained in New Jersey; and

(d) Other applicable provisions of this surplus lines law must be complied with.

(e) No surplus lines agent shall exercise binding authority in this State on behalf of any insurer unless the agent has first filed with the commissioner for informational purposes and not for the purpose of approval or disapproval the written agreement between the agent and the insurer setting forth the terms, conditions and limitations governing the exercise of the binding authority by the agent. A copy of any amendments to the agreement and of any notice of cancellation or termination of the agreement shall be filed by the agent with the commissioner no later than 10 days after adoption thereof.

The agreement filed pursuant to this section shall be considered and treated as a confidential document, and shall not be available for inspection by the public.

The agreement shall include the following items:

(1) A description of the classes of insurance for which the agent holds binding authority;

(2) The geographical limits upon the exercise of binding authority by the agent;

(3) The maximum dollar limitation on the binding authority of the agent for any one risk for each class of insurance written by the agent;

(4) The maximum policy period for which the agent may bind a risk;

(5) If the binding authority is delegable by the agent, a prohibition against the delegation without the prior written approval of the insurer.

If an agent who is qualified in accordance with this section to exercise binding authority on behalf of an insurer delegates the binding authority to any other agent, the agent to whom the authority is delegated shall not exercise the same until a copy of the instrument delegating the binding authority shall first have been filed with the commissioner for informational purposes and not for the purpose of approval or disapproval. The instrument delegating the binding authority shall include an identification of the binding authority agreement between the delegating agent and the insurer.

3. Section 9 of P.L.1960, c.32 (C.17:22-6.43) is amended to read as follows:

C.17:22-6.43 Eligibility for export of insurance coverage; conditions.

9. No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The insurance coverage required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact that kind and class of insurance in this State, and the insurance coverage exported shall be only that coverage not so procurable from authorized insurers, provided, however, that associated commercial general liability and commercial property coverages may be exported along with such unprocurable coverage; and

(b) The premium rate at which the coverage is exported shall not be lower than the lowest rate which has been filed by or on behalf of any authorized insurer, provided, however, 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; and

(c) The policy form or contract under which the insurance is written shall provide coverage under substantially the same terms and conditions as that provided in policy forms or contracts which are currently approved by the commissioner for use in the admitted market for the same line or lines of insurance. Notwithstanding the foregoing, the surplus lines agent may file with the commissioner a policy form or contract which modifies the coverage provided for in forms approved in the admitted market if the modification meets one of the following criteria: (1) the modification 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) the modification renders the form unique and designed for use with respect to a particular subject of insurance.

At least 30 days before the effective date of any type of policy form or contract which deviates from the standard form, a surplus lines agent shall file the policy form or contract with the commissioner, together with a statement which sets forth the manner in which the form deviates from the standard form or a previously filed form, in accordance with the criteria set forth in paragraph (1) or (2) of this subsection, and the reasons for the deviation. If, following the filing of the policy form or contract the commissioner finds that it does not meet the criteria set forth in this subsection, he may order that the policy form or contract be disapproved or withdrawn and that no such policy forms or contracts thereafter be issued or renewed.

Except, that the commissioner shall by rules and regulations declare eligible for export generally and notwithstanding the provisions of subsections (a), (b) and (c) above, any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this State, that there is no reasonable or adequate market among authorized insurers. The notice of such hearing shall also identify any type of policy form or contract which deviates from the standard form approved in the admitted market that has been disapproved or withdrawn by the commissioner during the preceding year, and shall provide interested parties with the opportunity to present relevant information at the hearing for the commissioner's consideration. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner. The commissioner shall notify all surplus lines agents of such termination.

4. Section 11 of P.L.1960, c.32 (C.17:22-6.45) is amended to read as follows:

C.17:22-6.45 Eligibility of surplus lines insurer.

11. No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section. No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the commissioner in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than one full year preceding; or must be the subsidiary of an admitted insurer or of an already eligible surplus lines insurer that has been so admitted or eligible for a period of not less than one full year preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the commissioner with duly authenticated copies of its current annual financial statement, one in the language and monetary values of the country of the insurer, and the other in the English language and with all monetary values therein expressed in United States dollars, at the current exchange rate shown in the statement, and with such additional information relative to the insurer as the commissioner may require;

(d) The insurer shall establish satisfactory evidence of financial integrity, and:

(1) Have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers or \$15,000,000, whichever is greater; except that unauthorized insurers already eligible under this act shall have at least \$10,000,000 by December 31, 1996; at least \$12,500,000 by December 31, 1997; and \$15,000,000 by December 31, 1998. In addition, an alien insurer shall maintain in the United States, as the sole security requirement to qualify for eligibility in this State, an irrevocable trust fund in a state or federally chartered bank in an amount not less than \$2,500,000 for the protection of all of its policyholders in the United States; provided, however, that an alien insurer eligible for surplus lines may be required to deposit securities in New Jersey in an amount deemed appropriate by the commissioner as a condition of maintaining its eligibility status. The trust fund shall consist of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. The trust fund shall not be included in any calculation of capital and surplus or its equivalent and shall have an expiration date which at no time shall be less than five years. In lieu of the above capital and surplus requirements, and trust fund amount, any Lloyd's or other similar group of alien insurers, which group includes unincorporated individual insurers shall maintain a trust fund of not less than \$50,000,000.00 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions hereinabove set forth. The credit for reinsurance requirements of sections 2 and 3 of P.L.1993, c.243 (C.17:51B-2 and 17:51B-3) shall not apply to an eligible alien surplus lines insurer that appears on the quarterly listing prepared by the International Insurers Department (IID) of the National Association of Insurance Commissioners and that provides the commissioner annually with a copy of such insurer's current Schedule R filing and such other information concerning ceded reinsurance that the International Insurers Department or the commissioner may from time to time require. Any insurance exchange created by the laws of an individual state may be approved by the commissioner as an eligible insurer under the provisions of this section, and shall maintain capital and surplus, or the substantial equivalent thereof, of not less than \$35,000,000.00 in the aggregate. For insurance exchanges which maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate, except those syndicates which have elected and qualify for S corporation status pursuant to subsection (a) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1362, shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than \$2,000,000.00. Any syndicate which has elected and qualified for S corporation status pursuant to subsection (a) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1362, need not maintain the minimum capital and surplus required under the provisions of this section and the failure of any such syndicate to meet these minimum requirements shall not render the exchange ineligible for approval under this section; except that so long as such syndicate fails to maintain the minimum capital and surplus required under the

provisions of this section, such syndicate shall not transact the business of insurance in this State and shall not be approved by the commissioner as an eligible insurer under the provisions of this section. In the event the insurance exchange does not maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate shall have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers. No insurance exchange approved as an eligible insurer by the commissioner shall be a member of the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.) nor shall any claim against an exchange be deemed to be a covered claim pursuant to the provision of that act; and

(2) Have caused to be provided to the commissioner a copy of its current annual statement certified by the insurer, which, relative to the period reported upon, is no more than 18 months old, and which is either: (A) filed with and approved by the regulatory authority in the domicile of the unauthorized insurer; or (B) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon;

(e) The condition or methods of operation of the insurer must not be such as would render its operation hazardous to the public or its policyholders in this State;

(f) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(g) No insurer shall be eligible the management of which is found by the commissioner to be incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or which the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public;

(h) No insurer shall be eligible the voting control or ownership of which is held in whole or substantial part by any government or governmental agency, or which is operated for or by any such government or agency. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or supervision of an insurer by public insurance supervisory authority shall not be deemed to be an ownership, control, or operation of the insurer for the purposes of this subsection;

(i) The insurer shall constitute, by a duly executed instrument filed with the department, the commissioner and his successor in office its true and lawful attorney, upon whom all original process in any action or legal proceeding against it may be served, and therein agree that any original process against it which may be served upon the commissioner shall be of the same force and validity as if served on the insurer, and that the authority thereof shall continue in force irrevocable so long as any liability of the insurer remains outstanding in this State.

The commissioner shall annually publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary.

Where it appears that any particular insurance risk which is eligible for export, but insurance coverage thereon, in whole or in part, is not procurable from the eligible surplus lines insurers, then the surplus lines agent may file a supplemental affidavit stating such facts and advising the commissioner that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the affidavit. Such named unauthorized insurer shall, however, before accepting any risk in this State, deposit with the commissioner United States government bonds in an amount acceptable to the commissioner, which shall be held by said commissioner for the benefit of New Jersey

policyholders only and the surplus lines agent shall procure from such unauthorized insurer and file with the commissioner a certified copy of its current annual statement of financial condition. If such deposit is made and the statement reveals, including both capital and surplus, net assets of at least \$5,000,000 consisting of at least \$1,500,000 liquid assets, then the surplus lines agent may proceed to consummate the contract of insurance. Whenever any insurance risk or any part thereof is placed with an unauthorized insurer, as provided herein, the policy, binder or cover note shall bear conspicuously on its face in boldface type the following notation:

"All or some of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the insurance commissioner of this State. The placing of such insurance by a duly licensed surplus lines agent in this State shall not be construed as approval of such insurer by the insurance commissioner of the State of New Jersey. Such insurance is not covered by the New Jersey Property-Liability Insurance Guaranty Association or the New Jersey Surplus Lines Insurance Guaranty Fund." All other provisions of this Title, except the provisions of P.L.1984, c.101 (C.17:22-6.70 et seq.), shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

5. Section 13 of P.L.1960, c.32 (C.17:22-6.47) is amended to read as follows:

C.17:22-6.47 Submission of affidavit, certification to surplus lines agent.

13. Within 30 business days after the effectuation of any surplus lines insurance the originating broker shall submit to the surplus lines agent an affidavit or certification by the broker, on a form prescribed and furnished by the commissioner, as to efforts made to place the coverage with authorized insurers and the results thereof, except that no such affidavit or certification shall be required for those coverages, risks or classes of insurance declared eligible for export by the commissioner pursuant to section 9 of P.L.1960, c.32 (C.17:22-6.43). The affidavit or certification shall be maintained in the files of the broker and the surplus lines agent and shall be available for inspection by the commissioner for a period of at least five years.

A broker who fails to submit the affidavit or certification to the surplus lines agent within the prescribed time is subject to the penalties provided under section 27 of P.L.1960, c.32 (C.17:22-6.61).

6. Section 23 of P.L.1960, c.32 (C.17:22-6.57) is amended to read as follows:

C.17:22-6.57 Record of surplus lines contract procured.

23. Each surplus lines agent shall keep in his office in this State a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

- (a) Amount of the insurance and perils insured against;
- (b) Brief general description of property insured and where located;
- (c) Gross premium charged;
- (d) Return premium paid, if any;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract, and the terms thereof;
- (g) Name and post-office address of the insured;
- (h) Name and home office address of the insurer;
- (i) Amount collected from the insured; and
- (j) Other information as may be required by the commissioner.

The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for five years next following expiration or cancellation of the contract.

7. Section 24 of P.L.1960, c.32 (C.17:22-6.58) is amended to read as follows:

C.17:22-6.58 Verified report of surplus lines insurance transacted.

24. Each surplus lines agent shall within 45 calendar days after the end of each calendar quarter file with the commissioner a verified report in duplicate of all surplus lines insurance

transacted by him during such calendar quarter.

The report shall be on forms as prescribed and furnished by the commissioner and shall show:

- (a) Gross amount of each kind of insurance transacted;
- (b) Aggregate gross premiums charged;
- (c) Aggregate of returned premiums and taxes paid to insureds;
- (d) Aggregate of net premiums; and
- (e) Additional information as required by the commissioner.

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

C.17:22-6.59 Premium receipts tax for surplus lines coverages.

25. The premiums charged for surplus lines coverages are subject to a premium receipts tax of 3% of all gross premiums less any return premiums charged for such insurance. The surplus lines agent shall collect from the insured, either directly or through the originating broker, the amount of the tax, in addition to the full amount of the gross premium charged by the insurer for the insurance; provided, however, that the tax on any unearned portion of the premium shall be returned to the policyholder by the surplus lines agent. The surplus lines agent is prohibited from absorbing such tax, or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his commission.

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

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

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

If a surplus lines policy covers risks or exposures only partially in this State, the tax payable shall be computed on the portion of the premium which is properly allocable to the risks or exposures located in this State.

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

9. Section 27 of P.L.1960, c.32 (C.17:22-6.61) is amended to read as follows:

C.17:22-6.61 Suspension, revocation, refusal to renew license of surplus lines agent.

27. The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses and permits held by the licensee under this Title, upon any 1 or more of the following grounds:

- (a) Removal of the licensee's office from the State;
- (b) Removal of the accounts and records of his surplus lines business from this State during the period when such accounts and records are required to be maintained under section 23 of P.L.1960, c.32 (C.17:22-6.57);
- (c) Closure of the licensee's office for a period of more than 30 consecutive days, unless granted permission by the commissioner upon showing circumstances warranting such closure for a longer period;
- (d) Failure to make and file his quarterly reports when due as required by section 24 of P.L.1960, c.32 (C.17:22-6.58);
- (e) Failure to pay the tax on surplus lines premiums, as provided for in this surplus lines law;

- (f) Failure to maintain the bond as required by section 14 of P.L.1987, c.293 (C.17:22A-14);
- (g) Suspension, revocation or refusal to renew any other license issued by the commissioner;
- (h) Lack of qualifications as for an original surplus lines agent's license;
- (i) Violation of any provision of this surplus lines law;
- (j) For any other cause for which a license could be denied, revoked, suspended or renewal refused under section 17 of P.L.1987, c.293 (C.17:22A-17).

In addition to the foregoing penalties set forth in this section, any person, persons or corporation violating any of the provisions of this act shall be liable to a penalty not exceeding \$2,500 for the first offense and not exceeding \$5,000 for each succeeding offense to be recovered in a summary proceeding as provided in R.S.17:33-2.

10. Section 29 of P.L.1960, c.32 (C.17:22-6.63) is amended to read as follows:

C.17:22-6.63 Lawsuits against unauthorized insurer.

29. An unauthorized insurer which has not been made eligible as a surplus lines insurer by the commissioner in accordance with section 11 of P.L.1960, c.32 (C.17:22-6.45) may be sued upon any cause of action arising in this State under any surplus lines insurance contract issued by it or certificate, cover note or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided in the Unauthorized Insurers' Process Act, P.L.1952, c.330 (C.17:51-1 et seq.).

Any such policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.

This section shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

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

C.17:22-6.64 Report of insurance through unauthorized foreign, alien insurer.

30. Every insured who in this State procures or causes to be procured or continues or renews insurance with an unauthorized foreign or alien insurer, or any insured or self-insurer who procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this State, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this State or exempted from tax under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30 days after the date such insurance was so procured, continued, or renewed, file a report of the same with the commissioner in writing and upon forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner.

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

There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a tax at the rate of 3% of the gross amount of such premium less any return premiums charged for such insurance. Within 30 days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in this section, the insured shall pay the amount of the tax to the commissioner, who, after reviewing the above report, shall turn over the amount of the tax to the Director of the Division of Taxation along with a summary of the facts necessary to enable the director to ascertain and fix the proper amount of the tax.

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

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

R.S.54:49-4.

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

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

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

This section does not apply as to life or disability insurances.

12. Section 2 of P.L.1987, c.293 (C.17:22A-2) is amended to read as follows:

C.17:22A-2 Definitions relative to insurance producers licensing.

2. As used in this act:

a. "Applicant" means a person who has applied for, or who intends to apply for, a license in accordance with this act.

b. "Commissioner" means the Commissioner of Insurance.

c. "Days" means calendar days.

d. "Department" means the Department of Insurance.

e. "Insurance," "insurance policy" or "insurance contract" includes contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, surety, guaranty and title insurance.

f. "Insurance agent" means a person authorized, in writing, by any insurance company to act as its agent to solicit, negotiate or effect insurance contracts on its behalf or to collect insurance premiums and who may be authorized to countersign insurance policies on its behalf.

g. "Insurance broker" means a person who, for a commission, brokerage fee, or other consideration, acts or aids in any manner concerning negotiation, solicitation or effectuation of insurance contracts as the representative of an insured or prospective insured; or a person who places insurance in an insurance company that he does not represent as an agent.

h. "Insurance consultant" means a person who, for a fee, commission or other consideration, acts or holds himself out to the public or any licensee as offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any insurance policy or contract that is or could be issued in this State, but shall not include bank trust officers, attorneys-at-law and certified public accountants who negotiate contracts on behalf of others or provide general financial counsel if no commission or brokerage fee is paid for those services.

i. "Insurance company" includes any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined in P.L.1959, c.167 (C.17:44A-1 et seq.) and risk retention groups and purchasing groups as defined in 15 U.S.C. §3901.

j. "Insurance producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant.

k. "License" means any license issued pursuant to the provisions of this act or any act which is superseded by this act.

l. "Licensee" means any person holding an insurance producer license issued pursuant to this act.

m. "Limited insurance representative" means a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by the nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license.

n. "Organization" means any corporation, partnership or other legal entity.

o. "Person" means any individual, corporation, partnership or other legal entity.

p. "State, other than this State," includes any other state, the District of Columbia, the Commonwealth of Puerto Rico, any territory of the United States and the Provinces of Canada.

q. "Bona fide office" means a place where the insurance producer can be reached in person

and by telephone during normal business hours, which is open to the public so as to provide reasonable access for the transaction of business. A bona fide office is more than a mail drop, a summer home that is unattended during a substantial portion of the year, or an answering service unrelated to a place where business is conducted.

C.17:22A-14.1 Surplus lines fees, certain; prohibited.

13. No surplus lines agent shall charge any fee to an originating broker in connection with the negotiation or procurement of any contract of surplus lines insurance that shall exceed \$50 plus the actual costs incurred for any services performed by a firm or person that is not associated with the surplus lines agent, such as inspection services.

14. Section 3 of P.L.1952, c.330 (C.17:51-3) is amended to read as follows:

C.17:51-3 Inapplicability of act.

3. The provisions of this act shall not apply to any action or proceeding against any unauthorized insurer arising out of a contract of

- (a) Reinsurance effectuated in accordance with the laws of New Jersey;
- (b) Insurance placed with an unauthorized insurer made eligible for surplus lines by the commissioner pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45);
- (c) Aircraft insurance;
- (d) Insurance on property or operations of railroads engaged in interstate commerce;
- (e) Insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this State; or
- (f) Insurance against loss of or damage to any property having a permanent situs outside this State; where such contract contains a provision designating the Commissioner of Insurance to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract or where the insurer enters a general appearance in any such action or proceeding.

P.L. 1996, CHAPTER 69

10

Repealer.

15. Section 17 of P.L.1960, c.32 (C.17:22-6.51) is repealed.

16. This act shall take effect immediately.

Approved July 12, 1996.