

SENATE, No. 1872

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senator CARDINALE

1 AN ACT concerning insurance exchanges approved as eligible surplus
2 lines insurers and amending P.L.1960, c.32 and P.L.1984, c.101.

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

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

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

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

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

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

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

33 (1) Have capital and surplus, or its equivalent under the laws of its
34 domiciliary jurisdiction, which is not less than twice the amount of

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

Matter underlined thus is new matter.

1 minimum capital and surplus required for like admitted insurers or
2 \$15,000,000, whichever is greater; except that unauthorized insurers
3 already eligible under this act shall have at least \$10,000,000 by
4 December 31, 1996; at least \$12,500,000 by December 31, 1997; and
5 \$15,000,000 by December 31, 1998. In addition, an alien insurer shall
6 maintain in the United States, as the sole security requirement to
7 qualify for eligibility in this State, an irrevocable trust fund in a state
8 or federally chartered bank in an amount not less than \$2,500,000 for
9 the protection of all of its policyholders in the United States; provided,
10 however, that an alien insurer eligible for surplus lines may be required
11 to deposit securities in New Jersey in an amount deemed appropriate
12 by the commissioner as a condition of maintaining its eligibility status.
13 The trust fund shall consist of cash, securities, letters of credit, or of
14 investments of substantially the same character and quality as those
15 which are eligible investments for the capital and statutory reserves of
16 admitted insurers authorized to write like kinds of insurance in this
17 State. The trust fund shall not be included in any calculation of capital
18 and surplus or its equivalent and shall have an expiration date which
19 at no time shall be less than five years. In lieu of the above capital and
20 surplus requirements, and trust fund amount, any Lloyd's or other
21 similar group of alien insurers, which group includes unincorporated
22 individual insurers shall maintain a trust fund of not less than
23 \$50,000,000.00 as security to the full amount thereof for all
24 policyholders and creditors in the United States of each member of the
25 group, and the trust shall likewise comply with the terms and
26 conditions hereinabove set forth. The credit for reinsurance
27 requirements of sections 2 and 3 of P.L.1993, c.243 (C.17:51B-2 and
28 17:51B-3) shall not apply to an eligible alien surplus lines insurer that
29 appears on the quarterly listing prepared by the International Insurers
30 Department (IID) of the National Association of Insurance
31 Commissioners and that provides the commissioner annually with a
32 copy of such insurer's current Schedule R filing and such other
33 information concerning ceded reinsurance that the International
34 Insurers Department or the commissioner may from time to time
35 require. Any insurance exchange created by the laws of an individual
36 state may be approved by the commissioner as an eligible insurer under
37 the provisions of this section, and shall maintain capital and surplus,
38 or the substantial equivalent thereof, of not less than \$35,000,000.00
39 in the aggregate. For insurance exchanges which maintain funds in an
40 amount acceptable to the commissioner for the protection of all
41 insurance exchange policyholders, each individual syndicate, except
42 those syndicates which have elected and qualify for S corporation
43 status pursuant to subsection (a) of section 1362 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C.§1362, shall maintain minimum
45 capital and surplus, or the substantial equivalent thereof, of not less
46 than \$2,000,000.00. Any syndicate which has elected and qualified for

1 S corporation status pursuant to subsection (a) of section 1362 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C. §1362, need not
3 maintain the minimum capital and surplus required under the
4 provisions of this section and the failure of any such syndicate to meet
5 these minimum requirements shall not render the exchange ineligible
6 for approval under this section; except that so long as such syndicate
7 fails to maintain the minimum capital and surplus required under the
8 provisions of this section, such syndicate shall not transact the
9 business of insurance in this State and shall not be approved by the
10 commissioner as an eligible insurer under the provisions of this
11 section. In the event the insurance exchange does not maintain funds
12 in an amount acceptable to the commissioner for the protection of all
13 insurance exchange policyholders, each individual syndicate shall have
14 capital and surplus, or its equivalent under the laws of its domiciliary
15 jurisdiction, which is not less than twice the amount of minimum
16 capital and surplus required for like admitted insurers [. No insurance
17 exchange approved as an eligible insurer by the commissioner shall be
18 a member of the New Jersey Surplus Lines Insurance Guaranty Fund
19 created pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.) nor shall
20 any claim against an exchange be deemed to be a covered claim
21 pursuant to the provision of that act]; and

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

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

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

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

45 (h) No insurer shall be eligible the voting control or ownership of
46 which is held in whole or substantial part by any government or

1 governmental agency, or which is operated for or by any such
2 government or agency. Membership in a mutual insurer, or
3 subscribership in a reciprocal insurer, or ownership of stock of an
4 insurer by the alien property custodian or similar official of the United
5 States, or supervision of an insurer by public insurance supervisory
6 authority shall not be deemed to be an ownership, control, or
7 operation of the insurer for the purposes of this subsection;

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

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

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

27 Where it appears that any particular insurance risk which is eligible
28 for export, but insurance coverage thereon, in whole or in part, is not
29 procurable from the eligible surplus lines insurers, then the surplus
30 lines agent may file a supplemental affidavit stating such facts and
31 advising the commissioner that such part of the risk as shall be
32 unprocurable, as aforesaid, is being placed with named unauthorized
33 insurers, in the amounts and percentages set forth in the affidavit.
34 Such named unauthorized insurer shall, however, before accepting any
35 risk in this State, deposit with the commissioner United States
36 government bonds in an amount acceptable to the commissioner,
37 which shall be held by said commissioner for the benefit of New Jersey
38 policyholders only and the surplus lines agent shall procure from such
39 unauthorized insurer and file with the commissioner a certified copy
40 of its current annual statement of financial condition. If such deposit
41 is made and the statement reveals, including both capital and surplus,
42 net assets of at least \$5,000,000 consisting of at least \$1,500,000
43 liquid assets, then the surplus lines agent may proceed to consummate
44 the contract of insurance. Whenever any insurance risk or any part
45 thereof is placed with an unauthorized insurer, as provided herein, the
46 policy, binder or cover note shall bear conspicuously on its face in

1 boldface type the following notation:

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

14 (cf: P.L.1996, c.69, s.4)

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16 2. Section 3 of P.L.1984, c.101 (C.17:22-6.72) is amended to read
17 as follows:

18 3. As used in this act:

19 a. "Association" means the New Jersey Property-Liability
20 Insurance Guaranty Association created pursuant to P.L.1974, c.17
21 (C.17:30A-1 et seq.).

22 b. "Covered claim" means an unpaid claim, including a claim for
23 unearned premiums, which arises out of and is within the coverage,
24 and not in excess of the applicable limits of an insurance policy to
25 which this act applies, and which was issued by a surplus lines insurer
26 which was eligible to transact insurance business in this State at the
27 time the policy was issued and which has been determined to be an
28 insolvent insurer on or after June 1, 1984, if (1) the claimant or
29 policyholder is a resident of this State at the time of the occurrence of
30 the insured event for which a claim has been made, or (2) the property
31 from which the claim arises is permanently located in this State.

32 "Covered claim" shall not include any amount due any reinsurer,
33 insurance pool or underwriting association, as subrogation recoveries
34 or otherwise, except that a claim for any such amount, asserted against
35 a person insured under a policy issued by a surplus lines insurer which
36 has become an insolvent insurer, which, if it were not a claim by or for
37 the benefit of a reinsurer, insurer, insurance pool, or underwriting
38 association, would be a "covered claim," may be filed directly with the
39 receiver of the insolvent insurer, but in no event may any such claim
40 be asserted in any legal action against the insured of that insolvent
41 insurer. "Covered claim" shall also not include amounts for interest on
42 unliquidated claims, punitive damages unless covered by the policy,
43 counsel fees for prosecuting suits for claims against the fund, and
44 assessments or charges for failure by an insolvent insurer to have
45 expeditiously settled claims.

46 A "covered claim" shall not include a claim filed with the fund after

1 the final date set by the court for the filing of claims against the
2 liquidator or receiver of an insolvent insurer unless the claimant
3 demonstrates unusual hardship and the commissioner approves of
4 treatment of the claim as a "covered claim." "Unusual hardship" shall
5 be defined in regulations promulgated by the commissioner. With
6 respect to insurer insolvencies pending as of the effective date of this
7 1996 amendatory act, a "covered claim" shall not include a claim filed
8 with the fund: (1) more than one year after the effective date of this
9 1996 amendatory act or (2) the date set by the court for the filing of
10 claims against the liquidator or receiver of the insolvent insurer,
11 whichever date occurs later.

12 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty
13 Fund created pursuant to section 4 of this act.

14 d. "Insolvent insurer" means an insurer which was an eligible
15 surplus lines insurer at the time the insurance policy was issued or
16 when the insured event occurred, and which is determined to be
17 insolvent by a court of competent jurisdiction in this State or the state
18 or place in which the surplus lines insurer is domiciled. "Insolvent
19 insurer" does not include an admitted insurer issuing insurance
20 pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

21 e. "Member insurer" means an eligible, nonadmitted or surplus lines
22 insurer required to be a member of, and that is subject to, assessments
23 by the fund.

24 f. "Net direct written premiums" means direct gross premiums on
25 insurance policies written by a surplus lines insurer to which this act
26 applies, less return premiums thereon and dividends paid or credited
27 to policyholders on that direct business. If a policy issued by a surplus
28 lines insurer covers risks or exposures only partially in this State, the
29 "net direct written premiums" shall be computed, for assessment
30 purposes, on that portion of the premium subject to the premium
31 receipts tax levied in accordance with section 25 of P.L.1960, c.32
32 (C.17:22-6.59). "Net direct written premiums" do not include
33 premiums on contracts between insurers or reinsurers.

34 g. "Surplus lines insurer" means [a] an insurance exchange,
35 including the syndicates thereof, or nonadmitted insurer approved as
36 an eligible, nonadmitted or unauthorized insurer pursuant to section 11
37 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued
38 against which a covered claim may be filed in accordance with this act.
39 (cf: P.L.1996, c.156, s.3)

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41 3. This act shall take effect immediately and shall be retroactive to
42 June 23, 1994.

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STATEMENT

This bill requires insurance exchanges that have been approved as surplus lines insurers by the Commissioner of Banking and Insurance to be members of the New Jersey Surplus Lines Insurance Guaranty Fund. Insureds of syndicates of these insurance exchanges that are eligible surplus lines insurers will thereby be protected to the same extent as insureds of surplus lines insurers are currently protected in case of insolvencies.

Requires insurance exchanges to be members of the New Jersey Surplus Lines Insurance Guaranty Fund.