

17:22-6.37

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 17:22-6.37 et seq., (Surplus Lines Insurance)
LAWS OF: 1960 **CHAPTER:** 32
BILL NO: S208
SPONSOR(S): Ridolfi & Crane
DATE INTRODUCED: April 11, 1960
COMMITTEE: **ASSEMBLY:** ---
SENATE: ---
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** May 16, 1960
SENATE: May 16, 1960
DATE OF APPROVAL: May 23, 1960
FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:
SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: No
FISCAL NOTE: No
VETO MESSAGE: No
MESSAGE ON SIGNING: No
FOLLOWING WERE PRINTED:
REPORTS: No
HEARINGS: No

For historical background on this legislation, see the following newspaper articles *FROM THE NEWARK NEWS:*

N.N. 9-6-57. "Warns Insurance Men on Unlicensed Firms".

N.N. 1-18-58. "Badley Needed".

N.N. 12-18-59. "Asks Tighter Law on Risk Insurance".

N.N. 12-21-59. "Four Face Loss of State Licenses".

N.N. 1-10-61. "Penalty Set on Insuring".

N.N. 6-5-63. "38 Brokers Reprimanded".

Courier-Post, 7-Aug.-62 "High Risk Insurance Now Closely Regulated in N.J.".

Asbury Park Evening Press. 5-26-65. "State Holds License Threat Over Blacklisting Insurers".

(continued on other side)

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Reports:

- 974.90 New Jersey. Law Enforcement Council.
I59 Report...October 4, 1957.
1957 Trenton, 1957.

- 974.90 New Jersey. Law Enforcement Council.
I59 Report... September, 1957.
1957a Leonia, N.J., 1957.

- 974.90 New Jersey. Law Enforcement Council.
I59 Report...January 10, 1958.
1958

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[OFFICIAL COPY REPRINT]

SENATE, No. 208

STATE OF NEW JERSEY

INTRODUCED APRIL 11, 1960

By Senators RIDOLFI and CRANE

Referred to Committee on Judiciary

AN ACT relating to the licensing, regulation and supervision of surplus line agents; providing for the placement of insurance with unauthorized insurers and establishing a surplus lines examining office in the Department of Banking and Insurance and providing an appropriation therefor; and repealing section 21 of "An act relating to the licensing, regulation and supervision of insurance agents, insurance brokers and insurance solicitors, supplementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes and repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Revised Statutes and section 1 of 'An act concerning the licensing of agents for insurance companies in certain cases, supplementing chapter 22 of Title 17, and amending section 17:33-1 of the Revised Statutes,' approved May 16, 1941 (P. L. 1941, c. 118)" approved April 20, 1944 (P. L. 1944, c. 175), and repealing sections 2, 3, 4, 5, 6 and 7 of "An act to amend and supplement 'An act relating to the licensing, regulation and supervision of insurance agents, insurance brokers and insurance solicitors, supplementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes, and repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Revised Statutes and section 1 of "An act concerning the licensing of agents for insurance companies in certain cases, supplementing chapter 22 of Title 17, and amending section 17:33-1 of the Revised Statutes" approved May 16, 1941 (P. L. 1941,

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

c. 118)' approved April 20, 1944 (P. L. 1944, c. 175) and to repeal section 17:36-1 of the Revised Statutes'' approved October 28, 1948 (P. L. 1948, c. 462).

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

1 1. Section 21 of "An act relating to the licensing, regulation and super- 11
2 vision of insurance agents, insurance brokers and insurance solicitors, sup- 11
3 plementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes and 11
4 repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 11
5 and 17:32-11 of the Revised Statutes and section 1 of 'An act concerning the 11
6 licensing of agents for insurance companies in certain cases, supplementing 1
7 chapter 22 of Title 17, and amending section 17:33-1 of the Revised Stat- 1
8 utes,' approved May 16, [1949] 1941 (P. L. 1941, c. 118)'' approved April 1
9 20, 1944 (P. L. 1944, c. 175) is repealed. 1

1 2. Sections 2, 3, 4, 5, 6 and 7 of "An act to amend and supplement 'An 1
2 act relating to the licensing, regulation and supervision of insurance agents, 1
3 insurance brokers and insurance solicitors, supplementing chapters 22, 32 1
4 and 36 of Title 17 of the Revised Statutes, and repealing sections 17:22-1, 1
5 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Re- 2
6 vised Statutes and section 1 of "An act concerning the licensing of agents 2
7 for insurance companies in certain cases, supplementing chapter 22 of Title 2
8 17, and amending section 17:33-1 of the Revised Statutes'' approved May 2
9 16, 1941 (P. L. 1941, c. 118)' approved April 20, 1944 (P. L. 1944, c. 175)
10 and to repeal section 17:36-1 of the Revised Statutes'' approved October
11 28, 1948 (P. L. 1948, c. 462) are repealed.

1 3. No person shall in this State directly or indirectly act as agent for, or
2 otherwise represent or aid on behalf of another, any insurer not then au-
3 thorized to transact such insurance in this State, in the solicitation, negotia-
4 tion, procurement or effectuation of insurance or annuity contracts, or re-
5 newals thereof, or in the dissemination of information as to coverage or
6 rates, or forwarding of applications, or delivery of policies or contracts, or

7 inspection of risks, or fixing of rates, or investigation or adjustment of claims
8 or losses, or collection or forwarding of premiums, or in any other manner
9 represent or assist such an insurer in the transaction of insurance with
10 respect to subjects of insurance resident, located or to be performed in this
11 State. *Except that, the holder of an insurance broker's license shall have*
11A *authority on behalf of a prospective assured to negotiate and deal with a*
11B *surplus lines agent to effect any such transaction, collect the insurance pre-*
11C *mium therefor from the assured, and receive from the said surplus lines*
11D *agent a share of any commission or brokerage fee earned by the said sur-*
11E *plus lines agent in connection therewith.*

12 This section does not apply to:

13 (a) Matters authorized to be done by the commissioner under the unau-
14 thorized insurers process law, (N. J. S. A. 17:51-1 et seq.);

15 (b) Surplus lines insurance when written pursuant to the surplus lines
16 law;

17 (c) Transactions as to which a certificate of authority is not required of
18 an insurer [;] *under the insurance laws of the State of New Jersey;*

19 (d) Reinsurance effectuated in accordance with the laws of New Jersey.

20 (e) *Railroad or aviation risks engaged in interstate or international*
21 *commerce and wet marine risks engaged in international commerce.*

22 No insurance contract entered into in violation of this section shall be
23 deemed to have been rendered invalid thereby.

1 4. Any person who in this State represents or aids an unauthorized in-
2 surer in violation of section 3 of this act, shall upon conviction thereof be
3 guilty of a misdemeanor.

4 In addition to the penalty provided for herein such violator shall be liable,
5 personally, jointly and severally with any other person or persons liable
6 therefor, for payment of taxes payable on account of such insurance as if such
7 insurance were independently procured.

1 5. No unauthorized insurer shall institute, file, or maintain, or cause to
2 be instituted, filed, or maintained, any suit, action or proceeding in this State

3 to enforce any right, claim or demand arising out of any insurance transaction
4 in this State, except with respect to the following:

5 (1) Investigation, settlement, or litigation of claims under its policies
6 lawfully written in this State, or liquidation of assets and liabilities of the
7 insurer (other than collection of new premiums), all as resulting from its
8 former authorized operations in this State;

9 (2) Transactions involving a policy, subsequent to issuance thereof, cov-
10 ering only subjects of insurance not resident, located or expressly to be per-
11 formed in this State at time of issuance, and lawfully solicited, written, or
12 delivered outside this State;

13 (3) Transactions pursuant to surplus lines coverages lawfully written
14 under subtitle 3 of this Title;

15 (4) Reinsurance effectuated in accordance with the laws of New Jersey;

16 (5) The continuation and servicing of life insurance or disability insur-
17 ance policies or annuity contracts remaining in force as to residents of this
18 State where the insurer has withdrawn from the State and is not transacting
19 new insurance therein.

1 6. Sections 6 through 31 of this act constitute and may be referred to as
2 "the surplus lines law." This act does not apply to life insurance and annuity
3 contracts nor to insurance coverages which are independently procured as
4 provided in section 30 of this act.

1 7. As used in this surplus lines law:

2 (a) "Surplus lines agent" means an individual licensed as provided in
3 this chapter to handle the placement of insurance coverages [with] *on behalf*
4 *of* unauthorized insurers.

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

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

10 (d) "Commissioner" means the Commissioner of Banking and Insurance
11 of the State of New Jersey.

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

5 (a) The insurance must be eligible for export under [sections 9 and 10]
6 *section 9* of this act;

7 (b) The insurer must be an eligible surplus lines insurer under [sections
8 10 and] *section 11* of this act;

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

12 (d) Other applicable provisions of this surplus lines law must be com-
13 plied with.

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

3 (a) The full amount of insurance required must not be procurable, *after*
4 *a diligent effort has been made to do so*, from among the insurers authorized
5 to transact that kind and class of insurance in this State, and the amount of
5A insurance exported shall be only the excess over the amount and kind so
5B procurable from authorized insurers.

6 (b) *The premium rate at which the coverage is exported shall not be*
6A *lower than the lowest rate which has been filed by or on behalf of any au-*
6B *thorized insurer.*

7 [(b)] (c) The policy or contract form under which the insurance is ex-
8 ported shall not provide coverage different from similar contracts on file and
9 in actual current use in this State by the majority of authorized insurers
10 actually writing similar coverages on similar risks; except, that a coverage
11 may be exported under a unique form of policy designed for use with respect
12 to a particular subject of insurance if a copy of such form is filed with the
13 commissioner by the surplus lines agent desiring to use the same. Said form
14 shall be deemed approved by the commissioner unless within 10 days after

15 receipt of same the commissioner shall make a finding that the use of such
16 form is not reasonably necessary for the principal purposes of the coverage
17 or that its use would be contrary to the purposes of this surplus lines law.

18 Except, that the commissioner [may] *shall* by rules and regulations de-
19 clare eligible for export generally and notwithstanding the provisions of [par-
20 agraphs (a) and (b) of paragraph 1] *subsections (a), (b) and (c)* above,
21 any class or classes of insurance coverage or risk for which he finds, after
22 a hearing, which he shall hold annually or more often, of which notice thereof
23 was given to each insurer authorized to transact such class or classes in this
24 State, that there is no reasonable or adequate market among authorized in-
25 surers. Any such rules and regulations shall continue in effect during the
26 existence of the conditions upon which predicated, but subject to earlier ter-
27 mination by the commissioner. The commissioner shall notify all surplus
28 lines agents of such termination.

29 [This section does not apply to wet marine, transportation or aviation
30 risks engaged in interstate or international commerce.]

1 10. [Insurance coverage of wet marine, transportation or aviation risks
2 engaged in interstate or international commerce may be exported under the
3 following conditions:

4 (a) The insurance must be placed only by or through a licensed New
5 Jersey surplus lines agent;

6 (b) The insurer must be one made eligible by the commissioner specifically
7 for such coverages, based upon information furnished by the insurer and
8 indicating that the insurer is well able to meet its financial obligations; and

9 (c) The surplus lines agent shall, within 60 days after procurement of
10 the policy or contract, file with the commissioner a copy of the policy, cover
11 note or contract.] *An admitted insurer may write any insurance coverage*
12 *declared eligible for export by the commissioner under section 9 of this act*
13 *through any surplus lines agent without regard to rate filings which may*
14 *otherwise be applicable to such admitted insurers provided that the business*
15 *is written in compliance with all other applicable provisions of this act.*

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

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

8 (b) The insurer must be currently an authorized insurer in the State or
9 country of its domicile as to the kind or kinds of insurance proposed to be
10 so placed, and must have been such an insurer for not less than [the 3 years
11 next] *1 full year* preceding; or must be the [wholly-owned] subsidiary of
12 an already eligible surplus lines insurer that has been so eligible for a period
13 of not less than [the 3 years next] *1 full year* preceding;

14 (c) Before granting eligibility the requesting surplus lines agent or the
15 insurer shall furnish the commissioner with duly authenticated copies of its
16 current annual financial statement, 1 in the language and monetary values
17 of the country of the insurer, and the other in the English language and with
18 all monetary values therein expressed in United States dollars, at the current
19 exchange rate shown in the statement, and with such additional information
20 relative to the insurer as the commissioner may require;

21 (d) The insurer must have surplus as to policyholders of not less than
22 the amount required under this Title for a like [authorized] *admitted* insurer,
23 and, if an alien insurer, must also have and maintain in the United States a
24 trust fund established under terms reasonably adequate for the protection of
25 all its policyholders in the United States in the amount of not less than
26 \$400,000.00, or[, in the case of a group of insurers, such a trust fund main-
27 tained and regulated under the same conditions of not less than \$50,000,000.00.
28 Any] *deposit with the commissioner a trust fund in the amount of not less*
29 *than \$50,000.00 solely for the protection of policyholders of this State. In lieu*
30 *of the above a group of individual insurers must have and maintain such a*
30A *trust fund regulated under the same conditions of not less than \$50,000,000.00.*

30B *To the extent of such minimum amounts, any such trust funds shall consist of*
30C *public obligations of the United States, or of any State, county, or munici-*
30D *pality thereof, or other investments of the same general character and qual-*
30E *ity as are eligible investments for like funds of like domestic insurers under*
31 *R. S. 17:24-1 et seq. The commissioner may, upon a showing that the volume*
31A *of business being transacted by the insurer does not require surplus as to*
31B *policyholders in the above amounts, relax such minimum requirements.*

31C *(e) The condition or methods of operation of the insurer must not be*
31D *such as would render its operation hazardous to the public or its policy-*
31E *holders in this State.*

32 **[(e)]** *(f) The insurer must be of good reputation as to the providing of*
33 *service to its policyholders and the payment of losses and claims;*

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

42 **[(g)]** *(h) No insurer shall be eligible the voting control or ownership of*
43 *which is held in whole or substantial part by any government or governmental*
44 *agency, or which is operated for or by any such government or agency.*
45 *Membership in a mutual insurer, or subscribership in a reciprocal insurer,*
46 *or ownership of stock of an insurer by the alien property custodian or similar*
47 *official of the United States, or supervision of an insurer by public insur-*
48 *ance supervisory authority shall not be deemed to be an ownership, control,*
49 *or operation of the insurer for the purposes of this subsection.*

50 **[(h)]** *Paragraphs (a), (b) and (d) of this section do not apply as to un-*
51 *authorized insurers made eligible under section 10 as to wet marine, trans-*
52 *portation and aviation risks as in such section provided.]*

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

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

62 Where it appears that any particular insurance risk which is eligible for
63 export, but insurance coverage thereon, in whole or in part is not procurable
64 from the eligible surplus lines insurers then the surplus lines agent may file
65 a supplemental affidavit stating such facts and advising the insurance com-
66 missioner that such part of the risk as shall be unprocurable, as aforesaid,
67 is being placed with named unauthorized insurers, in the amounts and per-
68 centages set forth in the affidavit. Such named unauthorized insurer shall,
69 however, before accepting any risk in this State, deposit with the commis-
70 sioner, United States government bonds of the market value of \$20,000.00
71 which shall be held by said commissioner for the benefit of New Jersey
72 policyholders only and the surplus lines agent shall procure from such un-
73 authorized insurer and file with the insurance commissioner a certified copy
74 of its [statement of condition as of the close of the last calendar year] *cur-*
75 *rent annual statement of financial condition*. If such deposit is made and the
76 statement reveals, including both capital and surplus, net assets of at least
77 \$500,000.00 *consisting of at least \$300,000.00 liquid assets*, then the sur-
78 plus lines agent may proceed to consummate the contract of insurance.
79 Whenever any insurance risk or any part thereof, is placed with an unau-
80 thorized insurer, as provided herein, the policy, binder or cover note shall
81 bear conspicuously on its face in boldface type the following notation: "All
82 or part of the insurers participating in this risk have not been admitted to
83 transact business in the State of New Jersey, nor have they been approved

84 as a surplus lines insurer by the insurance commissioner of this State. The
85 placing of such insurance by a duly licensed surplus lines agent in this State,
86 shall not be construed as approval of such insurer by the insurance com-
87 missioner of the State of New Jersey. [Consequently, you do not have the
88 protection of the insurance laws of New Jersey.]” All other provisions of
89 this Title shall apply to such placement the same as if such risks were placed
90 with an eligible surplus lines insurer.

1 12. If at any time the commissioner has reason to believe that any un-
2 authorized insurer then on the list of eligible surplus lines insurers is insol-
3 vent, or in unsound financial condition, or that it is no longer eligible under
4 the conditions therefor provided in section 11 of this act, he shall withdraw
5 the eligibility of the insurer to insure surplus lines risks in this State.

6 If the commissioner finds, after a hearing thereon of which notice was
7 given to all licensed surplus lines agents, that an insurer currently eligible as
8 a surplus lines insurer has willfully violated the laws of New Jersey, or does
9 not make [reasonable] *reasonably* prompt payment of just losses and claims
10 in this State, he may withdraw the eligibility of the insurer to insure surplus
11 lines risks in this State.

12 The commissioner shall promptly mail notice of all such withdrawals of
13 eligibility to each surplus lines agent at his address last of record with the
14 commissioner.

1 13. Within [10] 21 days after the effectuation of any surplus lines insur-
2 ance [(exclusive of Saturdays, Sundays, and legal holidays),] the surplus
3 lines agents shall file with the commissioner:

4 (a) A copy of the binder, cover note, certificate, policy or other confirma-
5 tion of insurance showing the identity and location of the subject of the pro-
6 posed insurance; name and address of the proposed insured; name of pro-
7 posed insurer or insurers; perils to be covered; form or type of policy or
8 contract under which to be insured; any special or additional coverages or
9 conditions; amount of premium or rate, and such other pertinent informa-
10 tion as the commissioner may reasonably require; and

11 (b) The **[affidavit]** *affidavits* of the *broker and the* surplus lines agent,
12 on forms as prescribed and furnished by the commissioner, as to efforts made
13 to place the coverage with authorized insurers and the results thereof, *except*
13A *that no such affidavit shall be required for those coverages, risks or classes*
13B *of insurance declared eligible for export by the commissioner pursuant to*
13C *section 9 of this act.*

14 **[This section does not apply as to wet marine, transportation or aviation**
15 **coverages which are subject to section 10 of this act.]**

1 14. The commissioner shall establish and maintain an office and such fa-
2 cilities as may reasonably be necessary to carry out the purposes of this act.
3 This office shall be known as "The Surplus Lines Examining Office."

4 In the operation of the examining office, the commissioner may employ
5 or obtain necessary personnel and office furniture, fixtures and facilities,
6 and/or may make joint use of personnel, furniture, fixtures and facilities
7 otherwise employed or used in his office.

1 15. There is hereby appropriated to the Department of Banking and In-
2 surance for the fiscal year 1959-60 the sum of \$35,000.00 for the purpose of
3 discharging the functions of the Surplus Lines Examining Office and the pay-
4 ment of salaries and expenses incurred in connection therewith.

1 16. Upon placing a surplus line coverage, the surplus lines agent shall
2 promptly issue and deliver to the insured evidence of the insurance consist-
3 ing either of the policy as issued by the insurer or, if such policy is not then
4 available, a certificate, cover note, or other confirmation of insurance. Such
5 document shall be executed or countersigned by the surplus lines agent and
6 shall show the description and location of the subject of the insurance,
7 coverage, conditions and term of the insurance, the premium and rate
8 charged and taxes collected from the insured, and the name and address of
9 the insured and insurer. If the direct risk is assumed by more than 1 in-
10 surer, the document shall state the name and address and proportion of the
11 entire direct risk assumed by each insurer.

12 No surplus lines agent shall issue any such document, or purport to
13 insure or represent that insurance will be or has been granted by any unau-
14 thorized insurer unless he has [prior] written authority from the insurer for
15 the insurance, or has received information from the insurer in the regular
16 course of business that such insurance has been granted, or an insurance
17 policy providing the insurance actually has been issued by the insurer and
18 delivered to the insured.

19 If after the issuance and delivery of any such document there is any
20 change as to the identity of the insurers, or the proportion of the direct risk
21 assumed by the insurer as stated in the original certificate, cover note, or
22 confirmation, or in any other material respect as to the insurance coverage evi-
23 denced by such a document, the surplus lines agent shall promptly issue
24 and deliver to the insured a substitute certificate, cover note or confirma-
25 tion, or endorsement for the original of such document, accurately showing
26 the current status of the coverage and the insurers responsible thereunder.
27 No such change shall result in a coverage or insurance contract which would
28 be in violation of this surplus lines law if originally issued on such basis.

29 If a policy issued by the insurer is not available upon placement of the
30 insurance and the surplus lines agent has issued and delivered a certificate,
31 cover note or confirmation, as hereinabove provided, the surplus lines agent
32 shall as soon as reasonably possible, and in no event later than [30] 60 days
33 after placement of such insurance, procure from the insurer its policy evi-
34 dencing the insurance and deliver the policy to the insured in replacement of
35 the certificate, cover note, or confirmation theretofore issued.

36 Any surplus lines agent who issues a false certificate, cover note, or con-
37 firmation of insurance, or false endorsement therefor, or who fails to notify
38 the insured promptly of any material change with respect to such insur-
39 ance [by delivery] *and deliver as soon as reasonably possible* to the insured
40 [of] a substitute certificate, cover note or confirmation, or endorsement as
41 provided in paragraph 3 shall be guilty of a misdemeanor.

1 17. Immediately upon issuing a surplus lines policy, the surplus lines
2 agent shall file with the commissioner an exact copy of the policy so issued.
3 The surplus lines agent shall likewise promptly file with the commissioner
4 an exact copy of any substitute certificate, cover note, or other confirmation
5 of insurance, and of every endorsement of an original policy, certificate, cover
6 note, or other confirmation of insurance, delivered to an insured, together
7 with such surplus lines agent's memorandum informing the commissioner as
8 to the substance of any change represented by such substitute certificate,
9 cover note, or other confirmation, or of any such endorsement, as compared
10 with the coverage as originally placed or issued. *Filings other than affidavits*
11 *made in accordance with this section and section 13 of this act shall not be*
12 *open to public inspection.*

1 18. Each surplus lines agent through whom a surplus lines coverage is
2 procured shall write or print on the outside of the policy and on any certificate,
3 cover note, or other confirmation of the insurance his name, address and
4 license number, the name of the New Jersey broker through whom the
5 business originated, and the name, address and code designation, if any, of the
6 foreign or alien broker through whom the coverage was placed. Where such
7 coverage is placed with an eligible surplus lines insurer there shall be stamped
8 or written upon the first page of the policy or the certificate, cover note or
9 confirmation of insurance, the words: "THIS INSURANCE IS ISSUED PURSUANT
10 TO THE NEW JERSEY SURPLUS LINES LAW."

1 19. Insurance contracts procured as "surplus lines" coverages from
2 unauthorized insurers in accordance with this law shall be fully valid and
3 enforceable as to all parties[, and shall be given acceptance and recognition
4 in all matters and respects to the same effect and extent as like contracts
5 issued by authorized insurers].

1 20. If the unauthorized insurer has assumed the risk as to a surplus lines
2 coverage placed under this surplus lines law, and if the premium therefor
3 has been received by the surplus lines agent who placed such insurance, then
4 in all questions thereafter arising under the coverage as between the insurer
5 and the insured the insurer shall be deemed to have received the premium

6 due to it for such coverage; and the insurer shall be liable to the insured as
7 to losses covered by such insurance, and for unearned premiums which may
8 become payable to the insured upon cancellation of such insurance, whether
9 or not in fact the surplus lines agent is indebted to the insurer with respect
10 to such insurance or for any other cause.

11 Each unauthorized insurer assuming a surplus lines [direct] risk under
12 this surplus lines law shall be deemed thereby to have subjected itself to the
13 terms of this section.

1 21. Any resident New Jersey licensed insurance broker who is determined
2 by the commissioner to have had sufficient experience in the insurance busi-
3 ness to be competent for the purpose, may be licensed as a surplus lines
4 agent, upon taking and successfully passing a written examination as to
5 surplus lines, as given by the commissioner. Any New Jersey copartnership
6 or corporation licensed as an insurance broker may become licensed as a
7 surplus lines agent provided all members of the copartnership or all the
8 officers of the corporation, as the case may be, who are actively engaged in
9 the surplus lines business of the copartnership or corporation possess the
10 requisite experience and successfully pass the written examination above set
11 forth. The commissioner shall issue a certificate of eligibility to all such
12 members and officers possessing the requisite experience and successfully
13 passing the written examination.

14 The examination requirements set forth in paragraph 1 of this section
15 shall not be required in the case of an individual, copartnership or corpora-
16 tion holding a New Jersey surplus lines broker's license on the effective date
17 of this act.

18 Initial and renewal applications for the said licenses and certificates
19 shall be made to the commissioner on forms as designated and furnished by
20 him.

21 Such licenses and certificates shall expire at midnight on the October 31
22 next following date of issuance, and shall be renewable upon written request
23 therefor filed with the commissioner and accompanied by payment of the
24 license fee, prior to expiration.

25 The following fees shall be paid in advance:

- 26 (a) Surplus lines agent's annual license fee \$100 00
- 27 (b) Annual certificate of eligibility 10 00
- 28 (c) Examination fee 10 00

29 All applicants and licensees must file and maintain the bond required
30 under section 22 of this act.

1 22. Prior to issuance of license, the applicant shall file with the com-
2 missioner, and thereafter for as long as any such license remains in effect
3 he shall keep in force and unimpaired, a bond in favor of the commissioner
4 or his successors in office in the penal sum of not less than \$10,000.00, aggre-
5 gate liability, with authorized corporate surety or sureties approved by the
6 commissioner; the bond for a corporation licensed as a surplus lines broker
7 shall be \$20,000.00. The commissioner may, in his discretion, require a bond
8 in larger amount commensurate with the volume of surplus lines business
9 transacted or to be transacted by a particular surplus lines agent. The
10 bond shall be conditioned that the surplus lines agent will comply with all
11 the requirements of subtitle 3 of Title 17 of the Revised Statutes.

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

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

15 The record shall at all times be open to examination by the commis-
16 sioner without notice, and shall be so kept available and open to the com-
17 missioner for 3 years next following expiration or cancellation of the con-
18 tract.

1 24. Each surplus lines agent shall on or before the end of the month
2 next following each calendar quarter file with the commissioner a verified
3 report in duplicate of all surplus lines insurance transacted by him during
4 such calendar quarter.

5 The report shall be on forms as prescribed and furnished by the com-
6 missioner and shall show:

7 (a) Gross amount of each kind of insurance transacted;

8 (b) Aggregate gross premiums charged;

9 (c) Aggregate of returned premiums and taxes paid to insureds;

10 (d) Aggregate of net premiums; and

11 (e) Additional information as required by the commissioner.

12 [The report shall include a separate report of the applicable items re-
13 ferred to in paragraph 2 of this section as to wet marine, transportation and
14 aviation coverages written under section 10 of this act.]

1 25. The premiums charged for surplus lines coverages are subject to a
2 premium receipts tax of 3% of all gross premiums less any return premiums
3 charged for such insurance. The surplus lines agent shall collect from the
4 insured the amount of the tax at the time of the delivery of the cover note,
5 certificate of insurance, policy or other initial confirmation of insurance, in
6 addition to the full amount of the gross premium charged by the insurer for
7 the insurance; provided, however, that the tax on any unearned portion of
8 the premium shall be returned to the policyholder by the surplus lines agent.
9 The surplus lines agent is prohibited from absorbing such tax, or, as an in-
10 ducement for insurance or for any other reason, rebating all or any part of
11 such tax or of his commission.

12 The surplus lines agent shall forward to the commissioner together with
13 his quarterly report a check in the amount of the premium receipts tax due

14 for that period made out to "the State of New Jersey," except that where
15 the policies cover fire insurance on property in any municipality or portion
16 of a township, or fire district in this State, which now has or may hereafter
17 have, a duly incorporated firemen's relief association, the premium receipts
18 tax covering such insurance shall be paid to the treasurer of the association.

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

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

31 This section does not apply as to insurance of or with respect to [wet
32 marine, transportation or aviation risks written under section 10 of this act
33 or as to] insurance of risks of the State Government or its agencies, or of
34 any county or municipality or of any agency thereof.

1 26. If the tax payable by a surplus lines agent under this surplus lines
2 law is not so paid within the time prescribed, the same shall be recoverable in
3 a suit brought by the commissioner against the surplus lines agent and the
4 surety or sureties on the bond filed by the surplus lines agent in accordance
5 with the requirements of this act.

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

4 (a) Removal of the licensee's office from the State;

5 (b) Removal of the accounts and records of his surplus lines business
6 from this State during the period when such accounts and records are re-
7 quired to be maintained under section 23 of this act;

8 (c) Closure of the licensee's office for a period of more than 30 consecu-
9 tive days, unless granted permission by the commissioner upon showing
10 circumstances warranting such closure for a longer period;

11 (d) Failure to make and file his quarterly reports when due as required
12 by section 24 of this act;

13 (e) Failure to pay the tax on surplus lines premiums, as provided for in
14 this surplus lines law;

15 (f) Failure to maintain the bond as required by section 22 of this act;

16 (g) Suspension, revocation or refusal to renew any other license issued
17 by the commissioner;

18 (h) Lack of qualifications as for an original surplus lines agent's license;

19 (i) Violation of any provision of this surplus lines law;

20 (j) For any other cause for which a license could be denied, revoked, sus-
21 pended or renewal refused under R. S. 17:22-6.6, 17:22-6.16 or 17:22-6.24.

22 In addition to the foregoing penalties set forth in paragraph 1 of this
23 [act] *section*, any person, persons or corporation violating any of the provi-
24 sions of this act shall be liable to a penalty not exceeding \$1,000.00 for the first
25 offense and not exceeding \$2,000.00 for each succeeding offense to be re-
26 covered in a summary proceeding as provided in section 17:33-2 of the Re-
27 vised Statutes.

1 28. If any licensed surplus lines agent fails to file the quarterly report
2 required or pay the taxes as required of him under this surplus lines law, the
3 commissioner shall issue an order directed to the licensee requiring the li-
4 censee to file such report and pay such tax or to show cause by a day certain to
5 be named therein why the commissioner should not revoke his license. The
6 notice shall provide a return day not sooner than 30 days subsequent to its
7 issuance and shall be served upon the licensee by registered mail at his busi-
8 ness post-office address.

9 The licensee may, not less than 10 days prior to such return day, file his
10 response in writing with the commissioner showing cause why he has not paid
11 such tax, but the only defenses available to the licensee with respect thereto
12 shall be that the commissioner is requiring the payment of a tax greater than
13 that due from the licensee, and such defense will be available only if the li-
14 censee shall have filed return purporting to show the tax payable by the licensee,
15 and shall have tendered the amount of tax computed by the licensee to be due.

16 If on the return day the licensee has not filed such return and paid the
17 tax and has not filed any such defense and made such tender, the commissioner
18 shall revoke the licenses of the licensee.

19 If the licensee files such defense to the order and makes such tender
20 within the time required, on the return day the commissioner shall hold a
21 hearing with respect to such matters and if the commissioner determines
22 after such hearing that the licensee has failed to pay the tax required, and the
23 licensee does not within 5 days thereafter pay such tax, the commissioner
24 shall enter his order revoking the licenses of such licensee.

25 The revocation of a license by the commissioner under this section shall
26 be subject to review in the Superior Court by a proceeding in lieu of preroga-
27 tive writ.

1 29. An unauthorized insurer may be sued upon any cause of action aris-
2 ing in this State under any surplus lines insurance contract issued by it or
3 certificate, cover note or other confirmation of such insurance issued by the
4 surplus lines agent, pursuant to the same procedure as is provided in The
5 Unauthorized Insurers' Process Act, sections 17:51-1 to 17:51-5 of the Re-
6 vised Statutes.

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

11 This section shall be cumulative to any other methods which may be pro-
12 vided by law for service of process upon the insurer.

1 30. Every insured who in this State procures or causes to be procured or
2 continues or renews insurance with an unauthorized foreign or alien in-
3 surer, or any insured or self-insurer who so procures or continues excess
4 loss, catastrophe or other insurance, upon a subject of insurance resident,
5 located or to be performed within this State, other than insurance pro-
6 cured through a surplus lines agent pursuant to the surplus lines law of
7 this State or exempted from tax under section 25 of this act, shall within 30
8 days after the date such insurance was so procured, continued, or renewed,
9 file a report of the same with the commissioner in writing and upon forms
10 designated by the commissioner and furnished to such an insured upon re-
11 quest. The report shall show the name and address of the insured or in-
12 sureds, name and address of the insurer, the subject of the insurance, a
13 general description of the coverage, the amount of premium currently
14 charged therefor, and such additional pertinent information as is reasonably
15 requested by the commissioner.

16 Any insurance in an unauthorized insurer procured through negotia-
17 tions or an application, in whole or in part occurring or made within or from
18 within this State, or for which premiums in whole or in part are remitted
19 directly or indirectly from within this State, shall be deemed to be insurance
20 procured, or continued or renewed in this State within the intent of para-
21 graph 1 above.

22 There is hereby levied upon the obligation, chose in action, or right rep-
23 resented by the premium charged for such insurance, a tax at the rate of
24 3% of the gross amount of such premium less any return premiums charged
25 for such insurance. [The insured shall withhold the amount of the tax from
26 the amount of premium charged by and otherwise payable to the insurer for
27 such insurance, and within] *Within* 30 days after the insurance was so pro-
28 cured, continued or renewed, and coincidentally with the filing with the com-
29 missioner of the report provided for in paragraph 1 above, the insured shall
30 pay the amount of the tax to the commissioner, who, after reviewing the
31 above report, shall turn over the amount of the tax to the Director of the

32 Division of Taxation along with a summary of the facts necessary to enable
33 the director to ascertain and fix the proper amount of the tax.

34 If the insured fails to withhold from the premium the amount of tax
35 herein levied, the insured shall be liable for the amount thereof and shall
36 pay the same to the commissioner within the time stated in paragraph 2
37 above.

38 The tax imposed hereunder if delinquent shall bear interest at the rate
39 of 6% per annum, compounded annually.

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

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

47 This section does not abrogate or modify, and shall not be construed or
48 deemed to abrogate or modify, any provision of section 3 representing or aid-
49 ing unauthorized insurer prohibited; section 4, penalty for representing un-
50 authorized insurer; or section 5, suits by unauthorized insurers prohibited;
51 or any other provision of this Title.

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

1 31. Every person by or as to whom insurance is procured or placed in
2 an unauthorized insurer, upon the commissioner's order shall produce for
3 his examination all policies and other documents evidencing the insurance,
4 and shall disclose to the commissioner the amount of gross premiums paid or
5 agreed to be paid for the insurance. In case of a failure of any person to
6 comply with the commissioner's order, the Superior Court, on application of
7 the commissioner, may issue an order requiring the production of the rec-
8 ords and information sought by the commissioner. Any person failing to obey
9 the court's order may be punished by the court as for a contempt.

10 This section does not apply to life insurance or disability insurance.

1 32. *If any clause, sentence, paragraph, section or part of this act shall be*
2 *adjudged by any court of competent jurisdiction to be invalid, such judg-*
3 *ment shall not affect, impair or invalidate the remainder thereof, but shall*
4 *be confined in its operation to the clause, sentence, paragraph, section or*
5 *part thereof directly involved in the controversy in which such judgment*
6 *shall have been rendered.*

1 **[32. This act shall take effect immediately.]**

1 33. *This action shall take effect immediately except that sections 1 and 2*
2 *shall not take effect until November 1, 1960.*

SENATE, No. 208

STATE OF NEW JERSEY

INTRODUCED APRIL 11, 1960

By Senators RIDOLFI and CRANE

Referred to Committee on Judiciary

AN Act relating to the licensing, regulation and supervision of surplus line agents; providing for the placement of insurance with unauthorized insurers and establishing a surplus lines examining office in the Department of Banking and Insurance and providing an appropriation therefor; and repealing section 21 of "An act relating to the licensing, regulation and supervision of insurance agents, insurance brokers and insurance solicitors, supplementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes and repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Revised Statutes and section 1 of 'An act concerning the licensing of agents for insurance companies in certain cases, supplementing chapter 22 of Title 17, and amending section 17:33-1 of the Revised Statutes,' approved May 16, 1941 (P. L. 1941, c. 118)" approved April 20, 1944 (P. L. 1944, c. 175), and repealing sections 2, 3, 4, 5, 6 and 7 of "An act to amend and supplement 'An act relating to the licensing, regulation and supervision of insurance agents, insurance brokers and insurance solicitors, supplementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes, and repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Revised Statutes and section 1 of 'An act concerning the licensing of agents for insurance companies in certain cases, supplementing chapter 22 of Title 17, and amending section 17:33-1 of the Revised Statutes' approved May 16, 1941 (P. L. 1941, c. 118)' approved April 20, 1944 (P. L. 1944, c. 175) and to repeal section

17:36-1 of the Revised Statutes'' approved October 28, 1948 (P. L. 1948, c. 462).

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

1 1. Section 21 of "An act relating to the licensing, regulation and super-
2 vision of insurance agents, insurance brokers and insurance solicitors, sup-
3 plementing chapters 22, 32 and 36 of Title 17 of the Revised Statutes and
4 repealing sections 17:22-1, 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6
5 and 17:32-11 of the Revised Statutes and section 1 of 'An act concerning the
6 licensing of agents for insurance companies in certain cases, supplementing
7 chapter 22 of Title 17, and amending section 17:33-1 of the Revised Stat-
8 utes,' approved May 16, 1949 (P. L. 1941, c. 118)'' is repealed.

1 2. Sections 2, 3, 4, 5, 6 and 7 of "An act to amend and supplement 'An
2 act relating to the licensing, regulation and supervision of insurance agents,
3 insurance brokers and insurance solicitors, supplementing chapters 22, 32
4 and 36 of Title 17 of the Revised Statutes, and repealing sections 17:22-1,
5 17:22-2, 17:22-3, 17:22-4, 17:22-5, 17:23-3, 17:32-6 and 17:32-11 of the Re-
6 vised Statutes and section 1 of "An act concerning the licensing of agents
7 for insurance companies in certain cases, supplementing chapter 22 of Title
8 17, and amending section 17:33-1 of the Revised Statutes'' approved May
9 16, 1941 (P. L. 1941, c. 118)' approved April 20, 1944 (P. L. 1944, c. 175)
10 and to repeal section 17:36-1 of the Revised Statutes'' approved October
11 28, 1948 (P. L. 1948, c. 462) are repealed.

1 3. No person shall in this State directly or indirectly act as agent for, or
2 otherwise represent or aid on behalf of another, any insurer not then au-
3 thorized to transact such insurance in this State, in the solicitation, negotia-
4 tion, procurement or effectuation of insurance or annuity contracts, or re-
5 newals thereof, or in the dissemination of information as to coverage or
6 rates, or forwarding of applications, or delivery of policies or contracts, or
7 inspection of risks, or fixing of rates, or investigation or adjustment of claims
8 or losses, or collection or forwarding of premiums, or in any other manner

9 represent or assist such an insurer in the transaction of insurance with
10 respect to subjects of insurance resident, located or to be performed in this
11 State.

12 This section does not apply to:

13 (a) Matters authorized to be done by the commissioner under the unau-
14 thorized insurers process law, (N. J. S. A. 17:51-1 et seq.);

15 (b) Surplus lines insurance when written pursuant to the surplus lines
16 law;

17 (c) Transactions as to which a certificate of authority is not required of
18 an insurer;

19 (d) Reinsurance effectuated in accordance with the laws of New Jersey.

20 No insurance contract entered into in violation of this section shall be
21 deemed to have been rendered invalid thereby.

1 4. Any person who in this State represents or aids an unauthorized in-
2 surer in violation of section 3 of this act, shall upon conviction thereof be
3 guilty of a misdemeanor.

4 In addition to the penalty provided for herein such violator shall be liable,
5 personally, jointly and severally with any other person or persons liable
6 therefor, for payment of taxes payable on account of such insurance as if such
7 insurance were independently procured.

1 5. No unauthorized insurer shall institute, file, or maintain, or cause to
2 be instituted, filed, or maintained, any suit, action or proceeding in this State
3 to enforce any right, claim or demand arising out of any insurance transaction
4 in this State, except with respect to the following:

5 (1) Investigation, settlement, or litigation of claims under its policies
6 lawfully written in this State, or liquidation of assets and liabilities of the
7 insurer (other than collection of new premiums), all as resulting from its
8 former authorized operations in this State;

9 (2) Transactions involving a policy, subsequent to issuance thereof, cov-
10 ering only subjects of insurance not resident, located or expressly to be per-

11 formed in this State at time of issuance, and lawfully solicited, written, or
12 delivered outside this State;

13 (3) Transactions pursuant to surplus lines coverages lawfully written
14 under subtitle 3 of this Title;

15 (4) Reinsurance effectuated in accordance with the laws of New Jersey;

16 (5) The continuation and servicing of life insurance or disability insur-
17 ance policies or annuity contracts remaining in force as to residents of this
18 State where the insurer has withdrawn from the State and is not transacting
19 new insurance therein.

1 6. Sections 6 through 31 of this act constitute and may be referred to as
2 "the surplus lines law." This act does not apply to life insurance and annuity
3 contracts nor to insurance coverages which are independently procured as
4 provided in section 30 of this act.

1 7. As used in this surplus lines law:

2 (a) "Surplus lines agent" means an individual licensed as provided in
3 this chapter to handle the placement of insurance coverages with unauthor-
4 ized insurers.

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

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

10 (d) "Commissioner" means the Commissioner of Banking and Insurance
11 of the State of New Jersey.

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

5 (a) The insurance must be eligible for export under sections 9 and 10 of
6 this act;

7 (b) The insurer must be an eligible surplus lines insurer under sections
8 10 and 11 of this act;

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

12 (d) Other applicable provisions of this surplus lines law must be com-
13 plied with.

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

3 (a) The full amount of insurance required must not be procurable from
4 among the insurers authorized to transact that kind and class of insurance in
5 this State, and the amount of insurance exported shall be only the excess
6 over the amount and kind so procurable from authorized insurers.

7 (b) The policy or contract form under which the insurance is exported
8 shall not provide coverage different from similar contracts on file and in
9 actual current use in this State by the majority of authorized insurers
10 actually writing similar coverages on similar risks; except, that a coverage
11 may be exported under a unique form of policy designed for use with respect
12 to a particular subject of insurance if a copy of such form is filed with the
13 commissioner by the surplus lines agent desiring to use the same. Said form
14 shall be deemed approved by the commissioner unless within 10 days after
15 receipt of same the commissioner shall make a finding that the use of such
16 form is not reasonably necessary for the principal purposes of the coverage
17 or that its use would be contrary to the purposes of this surplus lines law.

18 Except, that the commissioner may by rules and regulations declare
19 eligible for export generally and notwithstanding the provisions of para-
20 graphs (a) and (b) of paragraph 1 above, any class or classes of insurance
21 coverage or risk for which he finds, after a hearing, which he shall hold
22 annually or more often, of which notice thereof was given to each insurer
23 authorized to transact such class or classes in this State, that there is no
24 reasonable or adequate market among authorized insurers. Any such rules
25 and regulations shall continue in effect during the existence of the conditions

26 upon which predicated, but subject to earlier termination by the commis-
27 sioner. The commissioner shall notify all surplus lines agents of such
28 termination.

29 This section does not apply to wet marine, transportation or aviation
30 risks engaged in interstate or international commerce.

1 10. Insurance coverage of wet marine, transportation or aviation risks
2 engaged in interstate or international commerce may be exported under the
3 following conditions:

4 (a) The insurance must be placed only by or through a licensed New
5 Jersey surplus lines agent;

6 (b) The insurer must be one made eligible by the commissioner specifically
7 for such coverages, based upon information furnished by the insurer and
8 indicating that the insurer is well able to meet its financial obligations; and

9 (c) The surplus lines agent shall, within 60 days after procurement of
10 the policy or contract, file with the commissioner a copy of the policy, cover
11 note or contract.

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

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

8 (b) The insurer must be currently an authorized insurer in the State or
9 country of its domicile as to the kind or kinds of insurance proposed to be
10 so placed, and must have been such an insurer for not less than the 3 years
11 next preceding; or must be the wholly-owned subsidiary of an already eli-
12 gible surplus lines insurer that has been so eligible for a period of not less
13 than the 3 years next preceding;

14 (c) Before granting eligibility the requesting surplus lines agent or the
15 insurer shall furnish the commissioner with duly authenticated copies of its

16 current annual financial statement, 1 in the language and monetary values
17 of the country of the insurer, and the other in the English language and with
18 all monetary values therein expressed in United States dollars, at the current
19 exchange rate shown in the statement, and with such additional information
20 relative to the insurer as the commissioner may require;

21 (d) The insurer must have surplus as to policyholders of not less than
22 the amount required under this Title for a like authorized insurer, and, if
23 an alien insurer, must also have and maintain in the United States a trust
24 fund established under terms reasonably adequate for the protection of all
25 its policyholders in the United States in the amount of not less than
26 \$400,000.00, or, in the case of a group of insurers, such a trust fund main-
27 tained and regulated under the same conditions of not less than \$50,000,000.00.
28 Any such trust funds shall consist of public obligations of the United States,
29 or of any State, county, or municipality thereof, or other investments of the
30 same general character and quality as are eligible investments for like funds
31 of like domestic insurers under R. S. 17:24-1 et seq.

32 (e) The insurer must be of good reputation as to the providing of serv-
33 ices to its policyholders and the payment of losses and claims;

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

42 (g) No insurer shall be eligible the voting control or ownership of which
43 is held in whole or substantial part by any government or governmental
44 agency, or which is operated for or by any such government or agency.
45 Membership in a mutual insurer, or subscribership in a reciprocal insurer,
46 or ownership of stock of an insurer by the alien property custodian or similar

47 official of the United States, or supervision of an insurer by public insur-
48 ance supervisory authority shall not be deemed to be an ownership, control,
49 or operation of the insurer for the purposes of this subsection.

50 (h) Paragraphs (a), (b) and (d) of this section do not apply as to un-
51 authorized insurers made eligible under section 10 as to wet marine, trans-
52 portation and aviation risks as in such section provided.

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

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

62 Where it appears that any particular insurance risk which is eligible for
63 export, but insurance coverage thereon, in whole or in part is not procurable
64 from the eligible surplus lines insurers then the surplus lines agent may file
65 a supplemental affidavit stating such facts and advising the insurance com-
66 missioner that such part of the risk as shall be unprocurable, as aforesaid,
67 is being placed with named unauthorized insurers, in the amounts and per-
68 centages set forth in the affidavit. Such named unauthorized insurer shall,
69 however, before accepting any risk in this State, deposit with the commis-
70 sioner, United States government bonds of the market value of \$20,000.00
71 which shall be held by said commissioner for the benefit of New Jersey
72 policyholders only and the surplus lines agent shall procure from such un-
73 authorized insurer and file with the insurance commissioner a certified copy
74 of its statement of condition as of the close of the last calendar year. If such
75 deposit is made and the statement reveals, including both capital and surplus,
76 net assets of at least \$500,000.00, then the surplus lines agent may proceed to
77 consummate the contract of insurance. Whenever any insurance risk or any

78 part thereof, is placed with an unauthorized insurer, as provided herein, the
79 policy, binder or cover note shall bear conspicuously on its face in boldface
80 type the following notation: "All or part of the insurers participating in
81 this risk have not been admitted to transact business in the State of New
82 Jersey, nor have they been approved as a surplus lines insurer by the insur-
83 ance commissioner of this State. The placing of such insurance by a duly
84 licensed surplus lines agent in this State, shall not be construed as approval
85 of such insurer by the insurance commissioner of the State of New Jersey.
86 Consequently, you do not have the protection of the insurance laws of New
87 Jersey." All other provisions of this Title shall apply to such placement the
88 same as if such risks were placed with an eligible surplus lines insurer.

1 12. If at any time the commissioner has reason to believe that any un-
2 authorized insurer then on the list of eligible surplus lines insurers is insol-
3 vent, or in unsound financial condition, or that it is no longer eligible under
4 the conditions therefor provided in section 11 of this act, he shall withdraw
5 the eligibility of the insurer to insure surplus lines risks in this State.

6 If the commissioner finds, after a hearing thereon of which notice was
7 given to all licensed surplus lines agents, that an insurer currently eligible as
8 a surplus lines insurer has willfully violated the laws of New Jersey, or does
9 not make reasonable prompt payment of just losses and claims in this State,
10 he may withdraw the eligibility of the insurer to insure surplus lines risks
11 in this State.

12 The commissioner shall promptly mail notice of all such withdrawals of
13 eligibility to each surplus lines agent at his address last of record with the
14 commissioner.

1 13. Within 10 days after the effectuation of any surplus lines insurance
2 (exclusive of Saturdays, Sundays, and legal holidays), the surplus lines
3 agents shall file with the commissioner:

4 (a) A copy of the binder, cover note, certificate, policy or other confirma-
5 tion of insurance showing the identity and location of the subject of the pro-
6 posed insurance; name and address of the proposed insured; name of pro-

7 posed insurer or insurers; perils to be covered; form or type of policy or
8 contract under which to be insured; any special or additional coverages or
9 conditions; amount of premium or rate, and such other pertinent informa-
10 tion as the commissioner may reasonably require; and

11 (b) The affidavit of the surplus lines agent, on forms as prescribed and
12 furnished by the commissioner, as to efforts made to place the coverage with
13 authorized insurers and the results thereof.

14 This section does not apply as to wet marine, transportation or aviation
15 coverages which are subject to section 10 of this act.

1 14. The commissioner shall establish and maintain an office and such fa-
2 cilities as may reasonably be necessary to carry out the purposes of this act.
3 This office shall be known as "The Surplus Lines Examining Office."

4 In the operation of the examining office, the commissioner may employ
5 or obtain necessary personnel and office furniture, fixtures and facilities,
6 and/or may make joint use of personnel, furniture, fixtures and facilities
7 otherwise employed or used in his office.

1 15. There is hereby appropriated to the Department of Banking and In-
2 surance for the fiscal year 1959-60 the sum of \$35,000.00 for the purpose of
3 discharging the functions of the Surplus Lines Examining Office and the pay-
4 ment of salaries and expenses incurred in connection therewith.

1 16. Upon placing a surplus line coverage, the surplus lines agent shall
2 promptly issue and deliver to the insured evidence of the insurance consist-
3 ing either of the policy as issued by the insurer or, if such policy is not then
4 available, a certificate, cover note, or other confirmation of insurance. Such
5 document shall be executed or countersigned by the surplus lines agent and
6 shall show the description and location of the subject of the insurance,
7 coverage, conditions and term of the insurance, the premium and rate
8 charged and taxes collected from the insured, and the name and address of
9 the insured and insurer. If the direct risk is assumed by more than 1 in-
10 surer, the document shall state the name and address and proportion of the
11 entire direct risk assumed by each insurer.

12 No surplus lines agent shall issue any such document, or purport to
13 insure or represent that insurance will be or has been granted by any unau-
14 thorized insurer unless he has prior written authority from the insurer for
15 the insurance, or has received information from the insurer in the regular
16 course of business that such insurance has been granted, or an insurance
17 policy providing the insurance actually has been issued by the insurer and
18 delivered to the insured.

19 If after the issuance and delivery of any such document there is any
20 change as to the identity of the insurers, or the proportion of the direct risk
21 assumed by the insurer as stated in the original certificate, cover note, or
22 confirmation, or in any other material respect as to the insurance coverage evi-
23 denced by such a document, the surplus lines agent shall promptly issue
24 and deliver to the insured a substitute certificate, cover note or confirma-
25 tion, or endorsement for the original of such document, accurately showing
26 the current status of the coverage and the insurers responsible thereunder.
27 No such change shall result in a coverage or insurance contract which would
28 be in violation of this surplus lines law if originally issued on such basis.

29 If a policy issued by the insurer is not available upon placement of the
30 insurance and the surplus lines agent has issued and delivered a certificate,
31 cover note or confirmation, as hereinabove provided, the surplus lines agent
32 shall as soon as reasonably possible, and in no event later than 30 days
33 after placement of such insurance, procure from the insurer its policy evi-
34 dencing the insurance and deliver the policy to the insured in replacement of
35 the certificate, cover note, or confirmation theretofore issued.

36 Any surplus lines agent who issues a false certificate, cover note, or cou-
37 firmation of insurance, or false endorsement therefor, or who fails to notify
38 the insured promptly of any material change with respect to such insur-
39 ance by delivery to the insured of a substitute certificate, cover note or confir-
40 mation, or endorsement as provided in paragraph 3 shall be guilty of a
41 misdemeanor.

1 17. Immediately upon issuing a surplus lines policy, the surplus lines
2 agent shall file with the commissioner an exact copy of the policy so issued.
3 The surplus lines agent shall likewise promptly file with the commissioner
4 an exact copy of any substitute certificate, cover note, or other confirmation
5 of insurance, and of every endorsement of an original policy, certificate, cover
6 note, or other confirmation of insurance, delivered to an insured, together
7 with such surplus lines agent's memorandum informing the commissioner as
8 to the substance of any change represented by such substitute certificate,
9 cover note, or other confirmation, or of any such endorsement, as compared
10 with the coverage as originally placed or issued.

1 18. Each surplus lines agent through whom a surplus lines coverage is
2 procured shall write or print on the outside of the policy and on any certificate,
3 cover note, or other confirmation of the insurance his name, address and
4 license number, the name of the New Jersey broker through whom the
5 business originated, and the name, address and code designation, if any, of the
6 foreign or alien broker through whom the coverage was placed. Where such
7 coverage is placed with an eligible surplus lines insurer there shall be stamped
8 or written upon the first page of the policy or the certificate, cover note or
9 confirmation of insurance, the words: "THIS INSURANCE IS ISSUED PURSUANT
10 TO THE NEW JERSEY SURPLUS LINES LAW."

1 19. Insurance contracts procured as "surplus lines" coverages from
2 unauthorized insurers in accordance with this law shall be fully valid and
3 enforceable as to all parties, and shall be given acceptance and recognition
4 in all matters and respects to the same effect and extent as like contracts
5 issued by authorized insurers.

1 20. If the unauthorized insurer has assumed the risk as to a surplus lines
2 coverage placed under this surplus lines law, and if the premium therefor
3 has been received by the surplus lines agent who placed such insurance, then
4 in all questions thereafter arising under the coverage as between the insurer
5 and the insured the insurer shall be deemed to have received the premium
6 due to it for such coverage; and the insurer shall be liable to the insured as
7 to losses covered by such insurance, and for unearned premiums which may

8 become payable to the insured upon cancellation of such insurance, whether
9 or not in fact the surplus lines agent is indebted to the insurer with respect
10 to such insurance or for any other cause.

11 Each unauthorized insurer assuming a surplus lines direct risk under
12 this surplus lines law shall be deemed thereby to have subjected itself to the
13 terms of this section.

1 21. Any resident New Jersey licensed insurance broker who is determined
2 by the commissioner to have had sufficient experience in the insurance busi-
3 ness to be competent for the purpose, may be licensed as a surplus lines
4 agent, upon taking and successfully passing a written examination as to
5 surplus lines, as given by the commissioner. Any New Jersey copartnership
6 or corporation licensed as an insurance broker may become licensed as a
7 surplus lines agent provided all members of the copartnership or all the
8 officers of the corporation, as the case may be, who are actively engaged in
9 the surplus lines business of the copartnership or corporation possess the
10 requisite experience and successfully pass the written examination above set
11 forth. The commissioner shall issue a certificate of eligibility to all such
12 members and officers possessing the requisite experience and successfully
13 passing the written examination.

14 The examination requirements set forth in paragraph 1 of this section
15 shall not be required in the case of an individual, copartnership or corpora-
16 tion holding a New Jersey surplus lines broker's license on the effective date
17 of this act.

18 Initial and renewal applications for the said licenses and certificates
19 shall be made to the commissioner on forms as designated and furnished by
20 him.

21 Such licenses and certificates shall expire at midnight on the October 31
22 next following date of issuance, and shall be renewable upon written request
23 therefor filed with the commissioner and accompanied by payment of the
24 license fee, prior to expiration.

25 The following fees shall be paid in advance:

- 26 (a) Surplus lines agent's annual license fee \$100 00
- 27 (b) Annual certificate of eligibility 10 00
- 28 (c) Examination fee 10 00

29 All applicants and licensees must file and maintain the bond required
30 under section 22 of this act.

1 22. Prior to issuance of license, the applicant shall file with the com-
 2 missioner, and thereafter for as long as any such license remains in effect
 3 he shall keep in force and unimpaired, a bond in favor of the commissioner
 4 or his successors in office in the penal sum of not less than \$10,000.00, aggre-
 5 gate liability, with authorized corporate surety or sureties approved by the
 6 commissioner; the bond for a corporation licensed as a surplus lines broker
 7 shall be \$20,000.00. The commissioner may, in his discretion, require a bond
 8 in larger amount commensurate with the volume of surplus lines business
 9 transacted or to be transacted by a particular surplus lines agent. The
 10 bond shall be conditioned that the surplus lines agent will comply with all
 11 the requirements of subtitle 3 of Title 17 of the Revised Statutes.

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

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

15 The record shall at all times be open to examination by the commis-
16 sioner without notice, and shall be so kept available and open to the com-
17 missioner for 3 years next following expiration or cancellation of the con-
18 tract.

1 24. Each surplus lines agent shall on or before the end of the month
2 next following each calendar quarter file with the commissioner a verified
3 report in duplicate of all surplus lines insurance transacted by him during
4 such calendar quarter.

5 The report shall be on forms as prescribed and furnished by the com-
6 missioner and shall show:

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

12 The report shall include a separate report of the applicable items re-
13 ferred to in paragraph 2 of this section as to wet marine, transportation and
14 aviation coverages written under section 10 of this act.

1 25. The premiums charged for surplus lines coverages are subject to a
2 premium receipts tax of 3% of all gross premiums less any return premiums
3 charged for such insurance. The surplus lines agent shall collect from the
4 insured the amount of the tax at the time of the delivery of the cover note,
5 certificate of insurance, policy or other initial confirmation of insurance, in
6 addition to the full amount of the gross premium charged by the insurer for
7 the insurance; provided, however, that the tax on any unearned portion of
8 the premium shall be returned to the policyholder by the surplus lines agent.
9 The surplus lines agent is prohibited from absorbing such tax, or, as an in-
10 ducement for insurance or for any other reason, rebating all or any part of
11 such tax or of his commission.

12 The surplus lines agent shall forward to the commissioner together with
13 his quarterly report a check in the amount of the premium receipts tax due

14 for that period made out to "the State of New Jersey," except that where
15 the policies cover fire insurance on property in any municipality or portion
16 of a township, or fire district in this State, which now has or may hereafter
17 have, a duly incorporated firemen's relief association, the premium receipts
18 tax covering such insurance shall be paid to the treasurer of the association.

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

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

31 This section does not apply as to insurance of or with respect to wet
32 marine, transportation or aviation risks written under section 10 of this act
33 or as to insurance of risks of the State Government or its agencies, or of
34 any county or municipality or of any agency thereof.

1 26. If the tax payable by a surplus lines agent under this surplus lines
2 law is not so paid within the time prescribed, the same shall be recoverable in
3 a suit brought by the commissioner against the surplus lines agent and the
4 surety or sureties on the bond filed by the surplus lines agent in accordance
5 with the requirements of this act.

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

4 (a) Removal of the licensee's office from the State;

5 (b) Removal of the accounts and records of his surplus lines business
6 from this State during the period when such accounts and records are re-
7 quired to be maintained under section 23 of this act;

8 (c) Closure of the licensee's office for a period of more than 30 consecu-
9 tive days, unless granted permission by the commissioner upon showing
10 circumstances warranting such closure for a longer period;

11 (d) Failure to make and file his quarterly reports when due as required
12 by section 24 of this act;

13 (e) Failure to pay the tax on surplus lines premiums, as provided for in
14 this surplus lines law;

15 (f) Failure to maintain the bond as required by section 22 of this act;

16 (g) Suspension, revocation or refusal to renew any other license issued
17 by the commissioner;

18 (h) Lack of qualifications as for an original surplus lines agent's license;

19 (i) Violation of any provision of this surplus lines law;

20 (j) For any other cause for which a license could be denied, revoked, sus-
21 pended or renewal refused under R. S. 17:22-6.6, 17:22-6.16 or 17:22-6.24.

22 In addition to the foregoing penalties set forth in paragraph 1 of this act,
23 any person, persons or corporation violating any of the provisions of this act
24 shall be liable to a penalty not exceeding \$1,000.00 for the first offense and not
25 exceeding \$2,000.00 for each succeeding offense to be recovered in a summary
26 proceeding as provided in section 17:33-2 of the Revised Statutes.

1 28. If any licensed surplus lines agent fails to file the quarterly report
2 required or pay the taxes as required of him under this surplus lines law, the
3 commissioner shall issue an order directed to the licensee requiring the li-
4 censee to file such report and pay such tax or to show cause by a day certain to
5 be named therein why the commissioner should not revoke his license. The
6 notice shall provide a return day not sooner than 30 days subsequent to its
7 issuance and shall be served upon the licensee by registered mail at his busi-
8 ness post-office address.

9 The licensee may, not less than 10 days prior to such return day, file his
10 response in writing with the commissioner showing cause why he has not paid
11 such tax, but the only defenses available to the licensee with respect thereto
12 shall be that the commissioner is requiring the payment of a tax greater than
13 that due from the licensee, and such defense will be available only if the li-
14 censee shall have filed return purporting to show the tax payable by the licensee,
15 and shall have tendered the amount of tax computed by the licensee to be due.

16 If on the return day the licensee has not filed such return and paid the
17 tax and has not filed any such defense and made such tender, the commissioner
18 shall revoke the licenses of the licensee.

19 If the licensee files such defense to the order and makes such tender
20 within the time required, on the return day the commissioner shall hold a
21 hearing with respect to such matters and if the commissioner determines
22 after such hearing that the licensee has failed to pay the tax required, and the
23 licensee does not within 5 days thereafter pay such tax, the commissioner
24 shall enter his order revoking the licenses of such licensee.

25 The revocation of a license by the commissioner under this section shall
26 be subject to review in the Superior Court by a proceeding in lieu of preroga-
27 tive writ.

1 29. An unauthorized insurer may be sued upon any cause of action aris-
2 ing in this State under any surplus lines insurance contract issued by it or
3 certificate, cover note or other confirmation of such insurance issued by the
4 surplus lines agent, pursuant to the same procedure as is provided in The
5 Unauthorized Insurers' Process Act, sections 17:51-1 to 17:51-5 of the Re-
6 vised Statutes.

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

11 This section shall be cumulative to any other methods which may be pro-
12 vided by law for service of process upon the insurer.

1 30. Every insured who in this State procures or causes to be procured or
2 continues or renews insurance with an unauthorized foreign or alien in-
3 surer, or any insured or self-insurer who so procures or continues excess
4 loss, catastrophe or other insurance, upon a subject of insurance resident,
5 located or to be performed within this State, other than insurance pro-
6 cured through a surplus lines agent pursuant to the surplus lines law of
7 this State or exempted from tax under section 25 of this act, shall within 30
8 days after the date such insurance was so procured, continued, or renewed,
9 file a report of the same with the commissioner in writing and upon forms
10 designated by the commissioner and furnished to such an insured upon re-
11 quest. The report shall show the name and address of the insured or in-
12 sureds, name and address of the insurer, the subject of the insurance, a
13 general description of the coverage, the amount of premium currently
14 charged therefor, and such additional pertinent information as is reasonably
15 requested by the commissioner.

16 Any insurance in an unauthorized insurer procured through negotia-
17 tions or an application, in whole or in part occurring or made within or from
18 within this State, or for which premiums in whole or in part are remitted
19 directly or indirectly from within this State, shall be deemed to be insurance
20 procured, or continued or renewed in this State within the intent of para-
21 graph 1 above.

22 There is hereby levied upon the obligation, chose in action, or right rep-
23 resented by the premium charged for such insurance, a tax at the rate of
24 3% of the gross amount of such premium less any return premiums charged
25 for such insurance. The insured shall withhold the amount of the tax from
26 the amount of premium charged by and otherwise payable to the insurer for
27 such insurance, and within 30 days after the insurance was so procured, con-
28 tinued or renewed, and coincidentally with the filing with the commissioner
29 of the report provided for in paragraph 1 above, the insured shall pay the
30 amount of the tax to the commissioner, who, after reviewing the above re-
31 port, shall turn over the amount of the tax to the Director of the Division of

32 Taxation along with a summary of the facts necessary to enable the director
33 to ascertain and fix the proper amount of the tax.

34 If the insured fails to withhold from the premium the amount of tax
35 herein levied, the insured shall be liable for the amount thereof and shall
36 pay the same to the commissioner within the time stated in paragraph 2
37 above.

38 The tax imposed hereunder if delinquent shall bear interest at the rate
39 of 6% per annum, compounded annually.

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

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

47 This section does not abrogate or modify, and shall not be construed or
48 deemed to abrogate or modify, any provision of section 3 representing or aid-
49 ing unauthorized insurer prohibited; section 4, penalty for representing un-
50 authorized insurer; or section 5, suits by unauthorized insurers prohibited;
51 or any other provision of this Title.

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

1 31. Every person by or as to whom insurance is procured or placed in
2 an unauthorized insurer, upon the commissioner's order shall produce for
3 his examination all policies and other documents evidencing the insurance,
4 and shall disclose to the commissioner the amount of gross premiums paid or
5 agreed to be paid for the insurance. In case of a failure of any person to
6 comply with the commissioner's order, the Superior Court, on application of
7 the commissioner, may issue an order requiring the production of the rec-
8 ords and information sought by the commissioner. Any person failing to obey
9 the court's order may be punished by the court as for a contempt.

10 This section does not apply to life insurance or disability insurance.

1 32. This act shall take effect immediately.

STATEMENT

It is declared that the purposes of the surplus lines law are to provide orderly access for the insuring public of New Jersey to insurers not authorized to transact insurance in this State, through only qualified, licensed, and supervised surplus lines agents resident in New Jersey, for insurance coverages and to the extent thereof not procurable from authorized insurers; to regulate and supervise the placement of such coverages so as to provide the maximum protection for the insuring public of New Jersey; to protect such authorized insurers, which under the laws of New Jersey must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this surplus lines law.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 208

STATE OF NEW JERSEY

ADOPTED MAY 16, 1960

Amend page 2, section 1, line 8, following the words "approved May 16," take out "1949" and insert in lieu thereof "1941".

Amend page 2, section 1, line 8, following "(P. L. 1941, c. 118)" add "approved April 20, 1944 (P. L. 1944, c. 175).".

Amend page 3, section 3, line 11, following "State." add "Except that, the holder of an insurance broker's license shall have authority on behalf of a prospective assured to negotiate and deal with a surplus lines agent to effect any such transaction, collect the insurance premium therefor from the assured, and receive from the said surplus lines agent a share of any commission or brokerage fee earned by the said surplus lines agent in connection therewith.".

Amend page 3, section 3, line 18, after "an insurer" delete ";" and add "under the insurance laws of the State of New Jersey;".

Amend page 3, section 3, line 19, after line 19 add the following:

"(e) Railroad or aviation risks engaged in interstate or international commerce and wet marine risks engaged in international commerce.".

Amend page 4, section 7, line 3, following the word "coverages" take out "with" and insert in lieu thereof "on behalf of".

Amend page 4, section 8, line 5, following the word "under" delete the words "sections 9 and 10" and insert in lieu thereof "section 9".

Amend page 5, section 8, lines 7 and 8, following the word "under" delete "sections 10 and" and insert in lieu thereof "section".

Amend page 5, section 8, line 10, after "surplus lines agent whose" delete "principal".

Amend page 5, section 9, line 3, after "must not be procurable" add ", after a diligent effort has been made to do so,".

Amend page 5, section 9, line 7, insert new subsection (b):

"(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."

Amend page 5, section 9, line 7, change "(b) The policy..." to "(c) The policy..."

Amend page 5, section 9, line 18, following "commissioner" take out "may" and insert in lieu thereof "shall".

Amend page 5, section 9, lines 19 and 20, following "provisions of" take out "paragraphs (a) and (b) of paragraph 1" and insert in lieu thereof "subsections (a), (b) and (c)".

Amend page 6, section 9, lines 29 and 30, delete "This section does not apply to wet marine, transportation or aviation risks engaged in interstate or international commerce."

Amend page 6, section 10, lines 1 through 11, delete lines 1 through 11 and insert in lieu thereof:

"An admitted insurer may write any insurance coverage declared eligible for export by the commissioner under section 9 of this act through any surplus lines agent without regard to rate filings which may otherwise be applicable to such admitted insurers provided that the business is written in compliance with all other applicable provisions of this act."

Amend page 6, section 11, line 10, after "not less than" take out "the 3 years next" and insert in lieu thereof "1 full year".

Amend page 6, section 11, line 11, after "must be the" delete "wholly-owned".

Amend page 6, section 11, line 13, after "not less than" delete "the 3 years next" and insert in lieu thereof "1 full year".

Amend page 7, section 11, line 22, following "like" take out "authorized" and insert in lieu thereof "admitted".

Amend page 7, section 11, lines 26 through 31, following "\$400,000.00, or" take out ", in the case of a group of insurers, such a trust fund maintained and regulated under the same conditions of not less than \$50,000,000.00. Any" and insert in lieu thereof "deposit with the commissioner a trust fund in the amount of not less than \$50,000.00 solely for the protection of policyholders of this State. In lieu of the above a group of individual insurers must have and maintain such a trust fund regulated under the same conditions of not less than \$50,000,000.00. To the extent of such minimum amounts, any".

Amend page 7, section 11, line 31, following "et seq." add "The commissioner may, upon a showing that the volume of business being transacted by the insurer does not require surplus as to policyholders in the above amounts, relax such minimum requirements."

Amend page 7, section 11, line 32, after line 31, new paragraph (e):

"(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."

Amend page 7, section 11, line 32, "(e) The insurer..." take out "(e)" and insert in lieu thereof "(f) The insurer..."

Amend page 7, section 11, line 34, "(f) No insurer..." take out "(f)" and insert in lieu thereof "(g)".

Amend page 7, section 11, line 42, "(g) No insurer..." take out "(g)" and insert in lieu thereof "(h)".

Amend page 8, section 11, lines 50 through 52, delete "(h) Paragraphs (a), (b) and (d) of this section do not apply as to unauthorized insurers made eligible under section 10 as to wet marine, transportation and aviation risks as in such section provided."

Amend page 8, section 11, line 74, following "of its" delete "statement of condition as of the close of the last calendar year" and insert in lieu thereof "current annual statement of financial condition".

Amend page 8, section 11, line 76, after "net assets of at least \$500,000.00" add "consisting of at least \$300,000.00 liquid assets,".

Amend page 9, section 11, lines 86 and 87, delete "Consequently, you do not have the protection of the insurance laws of New Jersey."

Amend page 9, section 12, line 9, delete "reasonable" and insert in lieu thereof "reasonably".

Amend page 9, section 13, line 1, following "Within" delete "10" and insert in lieu thereof "21".

Amend page 9, section 13, line 2, delete "(exclusive of Saturdays, Sundays, and legal holidays)".

Amend page 10, section 13, line 11, delete "affidavit" and insert in lieu thereof "affidavits".

Amend page 10, section 13, line 11, after "of the" insert "broker and the".

Amend page 10, section 13, line 13, after "thereof" add ", except that no such affidavit shall be required for those coverages, risks or classes of insurance declared eligible for export by the commissioner pursuant to section 9 of this act."

Amend page 10, section 13, lines 14 and 15, delete "This section does not apply as to wet marine, transportation or aviation coverages which are subject to section 10 of this act."

Amend page 11, section 16, line 14, after "unless he has" delete "prior".

Amend page 11, section 16, line 32, following "later than" delete "30" and insert in lieu thereof "60".

Amend page 11, section 16, line 39, following "ance" delete "by delivery" and insert in lieu thereof "and deliver as soon as reasonably possible".

Amend page 11, section 16, line 39, following "to the insured" delete "of".

Amend page 12, section 17, line 10, following "or issued." add "Filings other than affidavits made in accordance with this section and section 13 of this act shall not be open to public inspection."

Amend page 12, section 19, line 3, after "enforceable as to all parties" delete ", and shall be given acceptance and recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers", and insert in lieu thereof ".".

Amend page 13, section 20, line 11, after "surplus lines" delete "direct".

Amend page 15, section 24, lines 12 through 14, delete "The report shall include a separate report of the applicable items referred to in paragraph 2 of this section as to wet marine, transportation and aviation coverages written under section 10 of this act.".

Amend page 16, section 25, line 31, after "with respect to" delete "wet marine, transportation or aviation risks written under section 10 of this act or as to".

Amend page 16, section 27, line 1, following "commissioner" delete "shall" and insert in lieu thereof "may".

Amend page 17, section 27, line 22, following "paragraph 1 of this" delete "act" and insert in lieu thereof "section".

Amend page 19, section 30, lines 25 through 27, following "for such insurance." delete "The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within" and in lieu thereof insert "Within".

Amend page 20, following section 31 add new section 32 as follows:

"32. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Amend page 20, section 32, line 1, delete section in its entirety and insert in lieu thereof:

"33. This act shall take effect immediately except that sections 1 and 2 shall not take effect until November 1, 1960."