

17:22-6.72

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:22-6.72

New Jersey Surplus Lines Insurance
Guaranty Fund Act"

LAWS OF: 1987

CHAPTER: 237

Bill No: S788

Sponsor(s): Di Francesco

Date Introduced: Pre-filed

Committee: **Assembly:** Insurance

Senate: Labor, Industry and Professions

Amended during passage: Yes

Amendments during passage denoted
by asterisks.

Date of Passage:

Assembly: March 5, 1987

Senate: September 18, 1986

Date of Approval: August 12, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

17:22-6.72
CHAPTER 237
NEW JERSEY
LEGISLATIVE HISTORY
1987

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 788**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator DiFRANCESCO

AN ACT concerning surplus line insurer insolvencies and amending
 [and supplementing] P. L. 1984, c. 101.

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

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

3 3. As used in this act:

4 a. "Association" means the New Jersey Property-Liability In-
 5 surance Guaranty Association created pursuant to P. L. 1974,
 6 c. 17 (C. 17:30A-1 et seq.).

7 b. "Covered claim" means an unpaid claim, including a claim
 8 for unearned premiums, which arises out of and is within the cover-
 9 age, and not in excess of the applicable limits of an insurance policy
 10 to which this act applies, and which was issued****[***, before the
 11 *effective date of this 1986 amendatory act,*]*** by a surplus lines
 12 insurer which was eligible to transact insurance business in this
 13 State at the time the policy was issued and which has been deter-
 14 mined to be an insolvent insurer on or after **[July 27, 1984]** *June*
 15 *1, 1984*, if (1) the claimant or policy holder is a resident of this
 16 State at the time of the occurrence of the insured event for which
 17 a claim has been made, or (2) the property from which the claim
 17A arises is permanently located in this State.

18 "Covered claim" shall not include any amount due any reinsurer,
 19 insurance pool or underwriting association, as subrogation recov-
 20 eries or otherwise, except that a claim for any such amount, as-
 21 serted against a person insured under a policy issued by a surplus
 22 lines insurer which has become an insolvent insurer, which, if it

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 19, 1986.

**—Assembly committee amendments adopted January 12, 1987.

23 were not a claim by or for the benefit of a reinsurer, insurer, in-
 24 surance pool, or underwriting association, would be a “covered
 25 claim,” may be filed directly with the receiver of the insolvent in-
 26 surer, but in no event may any such claim be asserted in any legal
 27 action against the insured of that insolvent insurer. “Covered
 28 claim” shall also not include amounts for interest on unliquidated
 29 claims, punitive damages unless covered by the policy, counsel fees
 30 for prosecuting suits for claims against the fund, and assessments
 31 or charges for failure by an insolvent insurer to have expeditiously
 32 settled claim. ****[**“Covered claim” shall also not include any claim
 32A which arises out of and is within the coverage of an insurance policy
 32B issued by an eligible surplus lines insurer after the effective date
 32C of this 1986 amendatory act.**]****

33 c. “Fund” means the New Jersey Surplus Lines Insurance
 34 Guaranty Fund created pursuant to section 4 of this act.

35 d. “Insolvent insurer” means an insurer which was an eligible
 36 surplus lines insurer at the time the insurance policy was issued
 37 or when the insured event occurred, and which is determined to be
 38 insolvent by a court of competent jurisdiction in this State or the
 39 state or place in which the surplus lines insurer is domiciled. “In-
 40 solvent insurer” does not include an admitted insurer issuing in-
 41 surance pursuant to section 10 of P. L. 1960, c. 32 (C. 17:22-6.44).

42 e. “Member insurer” means an eligible, nonadmitted or surplus
 43 lines insurer required to be a member of, and that is subject to
 44 assessments by the fund.

45 f. “Net direct written premiums” means direct gross premiums
 46 on insurance policies written by a surplus lines insurer to which
 47 this act applies, less return premiums thereon and dividends paid
 48 or credited to policyholders on that direct business. If a policy
 49 issued by a surplus lines insurer covers risks or exposures only
 50 partially in this State, the “net direct written premiums” shall be
 51 computed, for assessment purposes, on that portion of the premium
 52 subject to the premium receipts tax levied in accordance with
 53 section 25 of P. L. 1960, c. 32 (C. 17:22-6.59). “Net direct written
 54 premiums” do not include premiums on contracts between insurers
 55 or reinsurers.

56 g. “Surplus lines insurer” means a nonadmitted insurer ap-
 57 proved as an eligible, nonadmitted or unauthorized insurer pur-
 58 suant to section 11 of P. L. 1960, c. 32 (C. 17:22-6.45) at the time
 59 the policies were issued against which a covered claim may be filed
 60 in accordance with this act.

1 ****[***2. Section 14 of P. L. 1984, c. 101 (C. 17:22-6.83) is amended
 2 to read as follows:

3 14. [A member insurer shall include on the application and on
 4 the face of the policy or certificate for insurance subject to this
 5 act, a notice stating that the insurer is not an admitted company
 6 in New Jersey, but that the policy coverage has the protection, in
 7 whole or in part, of the New Jersey Surplus Lines Insurance Guar-
 8 anty Fund, if the eligible surplus lines insurer becomes bankrupt
 9 or insolvent. A member insurer or an agent or broker may advertise
 10 that policy coverages offered by a member insurer and subject to
 11 the provisions of this act are protected by the New Jersey Surplus
 12 Lines Insurance Guaranty Fund, should the surplus lines insurer
 13 become bankrupt or insolvent. The commissioner shall determine
 14 the contents and form of the notice.] At the time of the offer of
 15 coverage, the insured shall be provided by the broker or surplus
 16 lines agent with a written notice which shall state that the surplus
 17 lines insurer with whom the insurance coverage has been placed is
 18 not an admitted company in New Jersey and that in the event of
 19 the bankruptcy or insolvency of the surplus lines insurer the policy
 20 coverage will not have the protection of the New Jersey Property-
 21 Liability Insurance Guaranty Association or the New Jersey Sur-
 22 plus Lines Insurance Guaranty Fund. In addition, the notice shall
 23 be stamped or printed on the face of the policy or certificate which
 24 is delivered to the insured.***

1 * [2.] * ** [3.] ** **2.** This act shall take effect immediately
 2 * [and shall be retroactive to June 1, 1984] *.

INSURANCE—PROPERTY AND CASUALTY

Amends effective date of coverage by New Jersey Surplus Lines
 Insurance Guaranty Fund.

STATEMENT

The "New Jersey Surplus Lines Insurance Guaranty Fund Act," P. L. 1984, c. 101 (C. 17:22-6.70 et seq.) was precipitated by the anticipated insolvency of the Ambassador Insurance Company. While the ambassador situation was the stimulant for legislative action, this remedial legislation was intended to protect all New Jersey residents from the adverse consequences attending the insolvency of any surplus lines insurer. Unfortunately, the ambassador dilemma so dominated the decisions and considerations leading to passage of the legislation that the insolvency of Northeastern Fire Insurance Company of Pennsylvania was overlooked. Northeastern Fire Insurance Company is a Pennsylvania based insurer that was authorized to insure surplus lines risks in New Jersey until that authority was terminated on April 26, 1982 by then Insurance Commissioner, Joseph F. Murphy. On June 1, 1984, Northeastern Fire Insurance Company was declared insolvent by the State of Pennsylvania and is presently being liquidated under the direction of the Pennsylvania Insurance Commissioner. It has been estimated that there are approximately 449 New Jersey claims which total about \$1.7 million with Northeastern Fire Insurance Company. Under the existing law, those New Jersey residents who are Northeastern insureds or claimants would be unprotected by the guaranty fund because of a 57 day gap between the date of the Northeastern insolvency and the effective date for covered claims of an insolvent insurer under the statute. Such disparate treatment under the circumstances seems inequitable and this proposal is intended to rectify such a result by changing the date when coverage under the guaranty fund would apply to ensure that the Northeastern insolvency is covered.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 788

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 12, 1987

This bill, as amended by the Assembly Insurance Committee, modifies the "New Jersey Surplus Lines Insurance Guaranty Fund Act." As present, the fund covers surplus lines insurers which were declared insolvent on or after July 27, 1984; this bill would change that date to include insurers who were declared insolvent on or after June 1, 1984. The effect of this change in date is to include both policyholders of and claimants against the Northeastern Fire Insurance Company of Pennsylvania, a surplus lines insurer which was declared insolvent by regulatory officials in Pennsylvania on June 1, 1984.

The committee has amended the bill to eliminate the amendment made by the Senate Labor, Industry and Professions Committee which provided for the phasing out of the Fund. Thus, claims which result from future insolvencies would continue to be covered.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 788

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 1986

This bill, as amended, amends the "New Jersey Surplus Lines Insurance Guaranty Fund Act" as follows:

1. Changes the date of applicability of the act from including insurers declared insolvent on or after July 27, 1984, to those declared insolvent on or after June 1, 1984. This will extend guarantee fund coverage to this State's insureds and claimants of Northeastern Fire Insurance Company of Pennsylvania, a surplus lines insurer, that was declared insolvent by the State of Pennsylvania on June 1, 1984.

2. The bill phases out the Surplus Lines Insurance Guaranty Fund by making it applicable only to claims arising under policies issued by eligible surplus lines insurers on or before the effective date of this 1986 amendatory act.

3. The bill requires that notice be given to all prospective policyholders, as of the effective date of this 1986 amendatory act, that they are being insured by a nonadmitted insurer and that their policy does not have the protection of the New Jersey Property-Liability Insurance Guaranty Association or the Surplus Lines Insurance Guaranty Fund.