

17:22-6.45

### LEGISLATIVE HISTORY CHECKLIST

**NJSA** 17:22-6.45 (Insurance examiners--eligible to become surplus line insurers)

**LAWS** 1987 **CHAPTER** 407

**Bill No:** S2439

**Sponsor (s):** Cardinale

**Date Introduced:** July 24, 1986

**Committee: Assembly:** Insurance

**Senate:** Labor, Industry & Professions

**Amended during passage:** No

**Date of Passage: Assembly:** January 7, 1988

**Senate:** December 4, 1987

**Date of approval:** January 14, 1988

**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

Statutes in other states having insurance exchanges:

Fla. Stat. Ann. 629.401 (1983)

Ill. Ann. Stat ch. 73 para 719.01 (1979)

New York Ins 6201 (1982)

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SENATE, No. 2439

STATE OF NEW JERSEY

INTRODUCED JULY 24, 1986

By Senator CARDINALE

Referred to Committee on Labor, Industry and Professions

AN ACT concerning surplus lines insurers and amending P. L.  
1960, c. 32.

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

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

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

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

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

17 (c) Before granting eligibility the requesting surplus lines agent  
18 or the insurer shall furnish the commissioner with duly authenti-  
19 cated copies of its current annual financial statement, one in the  
20 language and monetary values of the country of the insurer, and  
21 the other in the English language and with all monetary values  
22 therein expressed in United States dollars, at the current exchange

**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 October 20, 1986.

\*\*—Assembly committee amendments adopted June 22, 1987.

23 rate shown in the statement, and with such additional information  
24 relative to the insurer as the commissioner may require;

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

27 (1) Have capital and surplus, or its equivalent under the laws  
28 of its domiciliary jurisdiction, which is not less than twice the  
29 amount of minimum capital and surplus required for like admitted  
30 insurers; except that any eligible insurer which does not possess on  
31 the effective date of this amendatory and supplementary act the  
32 minimum capital and surplus requirements shall have three years  
33 from the effective date of this amendatory and supplementary act  
34 to comply therewith. In addition, an alien insurer shall maintain in  
35 the United States an irrevocable trust fund in a state or federally  
36 chartered bank in an amount not less than \$1,500,000.00 for the  
37 protection of all of its policyholders in the United States. The trust  
38 fund shall consist of cash, securities, letters of credit, or of invest-  
39 ments of substantially the same character and quality as those  
40 which are eligible investments for the capital and statutory re-  
41 serves of admitted insurers authorized to write like kinds of  
42 insurance in this State. The trust fund shall not be included in any  
43 calculation of capital and surplus or its equivalent and shall have  
44 an expiration date which at no time shall be less than five years.  
45 In lieu of the above capital and surplus requirements, and trust  
46 fund amount, any Lloyd's or other similar unincorporated group of  
47 alien individual insurers shall maintain a trust fund of not less  
48 than \$50,000,000.00 as security to the full amount thereof for all  
49 policyholders and creditors in the United States of each member of  
50 the group, and the trust shall likewise comply with the terms and  
51 conditions hereinabove set forth. *Any insurance exchange created*  
52 *by the laws of an individual state \*\****[ shall be deemed an unau-**  
53 **thorized]***\*\* may be approved by the commissioner as an eligi-*  
54 *ble\*\* insurer under the provisions of this section, and shall main-*  
55 *tain capital and surplus, or the substantial equivalent thereof, of*  
56 *not less than \$35,000,000.00 in the aggregate. For insurance ex-*  
57 *changes which maintain funds in an amount acceptable to the com-*  
58 *missioner for the protection of all insurance exchange policy-*  
59 *holders, each individual syndicate shall maintain minimum capital*  
60 *and surplus, or the substantial equivalent thereof, of not less than*  
61 *\*\****[\$2,500,000.00]***\*\* \$2,000,000.00\*. \****[Each individual syndicate shall**  
62 **be required to obtain a New Jersey nonresident broker's license.]\***  
63 *In the event the insurance exchange does not maintain funds in an*  
64 *amount acceptable to the commissioner for the protection of all*  
65 *insurance exchange policyholders, each individual syndicate shall*

66 *have capital and surplus, or its equivalent under the laws of its*  
67 *domiciliary jurisdiction, which is not less than twice the amount of*  
67A *minimum capital and surplus required for like admitted insurers.\*\**  
67B *No insurance exchange approved as an eligible insurer by the com-*  
67C *missioner shall be a member of the New Jersey Surplus Lines*  
67D *Insurance Guaranty Fund created pursuant to P. L. 1984, c. 191*  
67E *(C. 17:22-6.79 et seq.) nor shall any claim against an exchange be*  
67F *deemed to be a covered claim pursuant to the provision of that*  
67G *act\*\* and*

68 (2) I have caused to be provided to the commissioner a copy of  
69 its current annual statement certified by the insurer, which, relative  
70 to the period reported upon, is no more than 18 months old, and  
71 which is either: (A) filed with and approved by the regulatory au-  
72 thority in the domicile of the unauthorized insurer; or (B) certified  
73 by an accounting or auditing firm licensed in the jurisdiction of the  
74 insurer's domicile. *In the case of an insurance exchange, the state-*  
75 *ment may be an aggregate combined statement of all underwriting*  
76 *syndicates operating during the period reported upon.*

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

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

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

92 (h) No insurer shall be eligible the voting control or ownership  
93 of which is held in whole or substantial part by any government  
94 or governmental agency, or which is operated for or by any such  
95 government or agency. Membership in a mutual insurer, or sub-  
96 scribership in a reciprocal insurer, or ownership of stock of an  
97 insurer by the alien property custodian or similar official of the  
98 United States, or supervision of an insurer by public insurance  
99 supervisory authority shall not be deemed to be an ownership,  
100 control, or operation of the insurer for the purposes of this sub-  
101 section.

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

106 This section shall not be deemed to cast upon the commissioner  
107 any duty or responsibility to determine the actual financial condi-  
108 tion or claims practices of any unauthorized insurer; and the status  
109 of eligibility, if granted by the commissioner, shall indicate only  
110 that the insurer appears to be sound financially and to have satis-  
111 factory claims practices, and that the commissioner has no credible  
112 evidence to the contrary.

113 Where it appears that any particular insurance risk which is  
114 eligible for export, but insurance coverage thereon, in whole or in  
115 part, is not procurable from the eligible surplus lines insurers, then  
116 the surplus lines agent may file a supplemental affidavit stating  
117 such facts and advising the commissioner that such part of the  
118 risk as shall be unprocurable, as aforesaid, is being placed with  
119 named unauthorized insurers, in the amounts and percentages set  
120 forth in the affidavit. Such named unauthorized insurer shall,  
121 however, before accepting any risk in this State, deposit with the  
122 commissioner United States government bonds in an amount ac-  
123 ceptable to the commissioner, which shall be held by said commis-  
124 sioner for the benefit of New Jersey policyholders only and the  
125 surplus lines agent shall procure from such unauthorized insurer  
126 and file with the commissioner a certified copy of its current annual  
127 statement of financial condition. If such deposit is made and the  
128 statement reveals, including both capital and surplus, net assets of  
129 at least \$500,000.00 consisting of at least \$300,000.00 liquid assets,  
130 then the surplus lines agent may proceed to consummate the con-  
131 tract of insurance. Whenever any insurance risk or any part  
132 thereof is placed with an unauthorized insurer, as provided herein,  
133 the policy, binder or cover note shall bear conspicuously on its face  
134 in boldface type the following notation: "All or some of the in-  
135 surers participating in this risk have not been admitted to transact  
136 business in the State of New Jersey, nor have they been approved  
137 as a surplus lines insurer by the insurance commissioner of this  
138 State. The placing of such insurance by a duly licensed surplus  
139 lines agent in this State shall not be construed as approval of such  
140 insurer by the insurance commissioner of the State of New Jersey."  
141 All other provisions of this Title shall apply to such placement the  
142 same as if such risks were placed with an eligible surplus lines  
143 insurer.

1 2. This act shall take effect immediately.

115 part is not procurable from eligible surplus lines insurers,  
 116 the surplus lines agent may file a supplemental affidavit stating  
 117 such facts and advising the commissioner that such part of the  
 118 risk as shall be unprocurable, as aforesaid, is being placed with  
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 120 forth in the affidavit. Such named unauthorized insurer shall,  
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 126 and file with the commissioner a certified copy of its current annual  
 127 statement of financial condition. If such deposit is made and the  
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 129 at least \$500,000.00 consisting of at least \$300,000.00 liquid assets,  
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 132 thereof is placed with an unauthorized insurer, as provided herein,  
 133 the policy, binder or cover note shall bear conspicuously on its face  
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 135 surers participating in this risk have not been admitted to transact  
 136 business in the State of New Jersey, nor have they been approved  
 137 as a surplus lines insurer by the insurance commissioner of this  
 138 State. The placing of such insurance by a duly licensed surplus  
 139 lines agent in this State shall not be construed as approval of such  
 140 insurer by the insurance commissioner of the State of New Jersey."  
 141 All other provisions of this Title shall apply to such placement the  
 142 same as if such risks were placed with an eligible surplus lines  
 143 insurer.

1 2. This act shall take effect immediately.

SPONSOR'S

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STATEMENT

This bill allows insurance exchanges with capital and surplus of not less than \$35,000,000.00 in the aggregate to qualify in this state as surplus lines insurers.

Florida, New York and Illinois currently have insurance exchanges. This bill will increase the amount of surplus lines insurance coverage available in this State.

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INSURANCE—PROPERTY AND CASUALTY

Allows insurance exchanges to become eligible surplus lines insurers.

52439 (1986)

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**SENATE, No. 2439**

with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: JUNE 22, 1987

As amended by the Assembly Insurance Committee, this bill provides that any insurance exchange created by the laws of an individual state may be approved by the Commissioner of Insurance as a surplus lines insurer under "the surplus lines law." Insurance exchanges would be required to maintain capital of \$35,000,000.00 in the aggregate. The bill requires that individual syndicates maintain minimum capital and surplus of not less than \$2,000,000.00 if they are in insurance exchanges which maintain a guaranty fund for policyholders. In the case of insurance exchanges which do not maintain any guaranty fund for policyholders, each syndicate would be required to have capital and surplus which is not less than twice the amount of minimum capital and surplus required for like admitted insurers. No exchange would be permitted to be a member of the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to P. L. 1984, c. 101 (C. 17:22-6.70 et seq.).

Insurance exchanges have been established in three states, Florida, Illinois, and New York. Exchanges operate in a similar manner to the Lloyd's exchange in London. The exchange is composed of individual syndicates which write various lines of business. The syndicates are composed of underwriting members and broker members which place the business. Syndicates are made up of a managing partner and other partners who can be insurers or individuals. The exchanges are authorized by statute and have their own underwriting rules and methods of operation. Initially, the authority of the exchanges to write business was limited to reinsurance and other types of limited coverage. Subsequently, however, the statutory authority of most exchanges was augmented to permit them to write direct insurance business.

The bill requires the exchange to maintain an aggregate capital of \$35,000,000.00 and each individual syndicate to maintain capital and surplus of at least \$2,000,000.00 or twice the amount of the capital and surplus required for admitted insurers, depending upon whether or not the exchange has a guaranty fund. At present, eligible surplus lines

insurers are required to maintain capital and surplus which is at least twice the amount of minimum capital and surplus required for like-admitted insurers. In New Jersey, stock insurers are required to maintain paid-in capital stock of at least \$2,000,000.00 and surplus of \$1,000,000.00 and mutual insurers are required to maintain net cash assets of at least \$3,000,000.00 for writing casualty insurance.

The purpose of the legislation generally is to increase insurance capacity in this State by providing another source of insurance coverage.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO  
**SENATE, No. 2439**  
with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: OCTOBER 20, 1986

This bill allows insurance exchanges to qualify in this State as surplus lines insurers under certain conditions. Insurance exchanges would qualify if they maintain capital and surplus of not less than \$35,000,000.00 in the aggregate. For insurance exchanges which maintain funds in an acceptable amount for the protection of all insurance exchange policyholders, each individual syndicate must maintain minimum capital and surplus of \$2,000,000.00. If there is no such fund, each individual syndicate must maintain at least twice the capital and surplus of an admitted insurer in the state in which it is located.