

17:22-6.69a

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 39

NJSA: 17:22-6.69a (The "reinsurance and Surplus Lines Stimulus and enhancement Act.")

BILL NO: A2670 (Substituted for S2010)

SPONSOR(S) Schaer and others

DATE INTRODUCED: May 13, 2010

COMMITTEE: **ASSEMBLY:** Financial Institutions and Insurance

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** February 17, 2011

SENATE: February 17, 2011

DATE OF APPROVAL: March 22, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A2670

SPONSOR'S STATEMENT: (Begins on page 6 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

S2010

SPONSOR'S STATEMENT: (Begins on page 6 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2011, CHAPTER 39, *approved March 22, 2011*
Assembly, No. 2670 (*Second Reprint*)

1 AN ACT concerning reinsurance and surplus lines requirements,
2 supplementing ¹and amending¹ P.L.1960, c.32 (C.17:22-6.40 et
3 seq.) and amending P.L.1993, c.243.

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

7
8 1. (New section) Sections 1 and 2 of this amendatory and
9 supplementary act shall be known and may be cited as the
10 “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

11
12 2. (New section) a. Notwithstanding any other provision of
13 law to the contrary, a domestic insurer possessing policyholder
14 surplus of at least \$15,000,000 may, pursuant to a resolution by its
15 board of directors, and upon the written approval of the
16 Commissioner of Banking and Insurance, be designated as a
17 domestic surplus lines insurer. ¹A domestic surplus lines insurer
18 shall be considered an eligible, unauthorized insurer for purposes of
19 writing surplus lines insurance coverage.¹

20 b. A domestic surplus lines insurer shall only insure in this
21 State a New Jersey risk procured from a surplus lines ¹**[producer]**
22 agent¹ in accordance with the provisions of “the surplus lines law,”
23 P.L.1960, c.32 (C. 17:22-6.40 et seq.).

24 c. A domestic surplus lines insurer shall not issue policies of
25 private passenger automobile insurance, workers’ compensation or
26 workers’ occupational disease insurance.

27 ¹d. Insurance written by a domestic surplus lines insurer shall be
28 subject to the tax on premiums provided by section 25 of P.L.1960,
29 c.32 (C.17:22-6.59).¹

30
31 ¹3. (New section) Whenever any insurance risk or any part
32 thereof is placed with a domestic surplus lines insurer, the policy,
33 binder, or cover note shall bear conspicuously on its face in
34 boldface, the following notation:
35 “Notice to policyholder: This policy is written by a domestic
36 surplus lines insurer, an eligible unauthorized insurer pursuant to

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted June 10, 2010.

²Assembly floor amendments adopted June 28, 2010.

1 section 2 of P.L. c. (C.), (pending before the Legislature as
2 this bill), and is not subject to the rate or form filing or approval
3 requirements of the New Jersey Department of Banking and
4 Insurance. This policy may contain conditions, limitations,
5 exclusions and different terms than a policy otherwise issued by a
6 New Jersey authorized or admitted insurer. This policy is not
7 covered by the New Jersey Property-Liability Guaranty
8 Association. This policy may be covered by the New Jersey Surplus
9 Lines Insurance Guaranty Fund, but only to the extent provided
10 pursuant to section 2 of P.L.1984, c.101 (C.17:22-6.71).”¹

11

12 ¹[3.] ^{4.} Section 2 of P.L.1993, c.243 (C.17:51B-2) is amended
13 to read as follows:

14 2. Credit for reinsurance ceded by an insurer which is
15 domiciled in New Jersey, or which is either licensed in New Jersey
16 or eligible to write surplus lines insurance in New Jersey and which
17 in either case is domiciled in a state or country which does not
18 employ standards regarding credit for reinsurance substantially
19 similar, as determined by the commissioner, to those applicable
20 under this act, shall be allowed as either an asset or a deduction
21 from liability only when:

22 a. The reinsurance is ceded to an assuming insurer which is
23 licensed to transact insurance or reinsurance in this State; or

24 b. The reinsurance is ceded to an assuming insurer which is
25 accredited as a reinsurer in this State. An accredited reinsurer is
26 one which:

27 (1) Files with the commissioner evidence of its submission to
28 this State's jurisdiction;

29 (2) Submits to this State's authority to examine its books and
30 records;

31 (3) Is licensed to transact insurance or reinsurance in at least
32 one state, or in the case of a United States branch of an assuming
33 alien insurer, is entered through, and licensed to transact insurance
34 or reinsurance in, at least one state;

35 (4) Files annually with the commissioner a copy of its annual
36 statement filed with the insurance department or other regulatory
37 authority of its state of domicile and a copy of its most recent
38 audited financial statement; and either:

39 (a) Maintains a surplus in regard to policyholders in an amount
40 which is not less than \$20,000,000 and whose accreditation has not
41 been denied by the commissioner within 120 days of its submission
42 therefor; or

43 (b) Maintains a surplus in regard to policyholders in an amount
44 less than \$20,000,000 and whose accreditation has been approved
45 by the commissioner;

46 (5) Submits a filing fee in an amount established by the
47 commissioner; and

1 (6) Provides any additional information, which may include, but
2 may not be limited to, information regarding the concentration of
3 the insurer's exposures, geographic or otherwise, and satisfies such
4 additional requirements as the commissioner deems necessary to
5 ensure that the particular insurer's condition and methods of
6 operation are not such as would render its operations hazardous to
7 the public or policyholders in this State.

8 No credit shall be allowed a ceding licensed insurer or
9 unauthorized eligible surplus lines insurer if the assuming insurer's
10 accreditation has been revoked by the commissioner after notice
11 and hearing; or

12 c. The reinsurance is ceded to an assuming insurer which is
13 domiciled and licensed in, or in the case of a United States branch
14 of an assuming alien insurer, is entered through, a state which
15 employs standards regarding credit for reinsurance substantially
16 similar to those applicable under this act, as determined by the
17 commissioner, and that assuming insurer or United States branch of
18 an assuming alien insurer:

19 (1) Maintains a surplus in regard to policyholders in an amount
20 of not less than \$20,000,000;

21 (2) Submits to the authority of this State to examine its books
22 and records; and

23 (3) Provides any additional information, which may include, but
24 may not be limited to, information regarding the concentration of
25 the insurer's exposures, geographic or otherwise, and satisfies such
26 additional requirements as the commissioner deems necessary to
27 ensure that the particular insurer's condition and methods of
28 operation are not such as would render its operations hazardous to
29 the public or policyholders in this State; except that the requirement
30 of paragraph (1) of this subsection shall not apply to reinsurance
31 ceded and assumed pursuant to pooling arrangements among
32 insurers in the same holding company system; or

33 d. The reinsurance is ceded to an assuming insurer which
34 maintains a trust fund in a qualified United States financial
35 institution for the payment of the valid claims of its United States
36 policyholders and ceding insurers, their assigns and successors in
37 interest. The assuming insurer shall report annually to the
38 commissioner information substantially the same as that required to
39 be reported on the NAIC Annual Statement form by licensed
40 insurers to enable the commissioner to determine the sufficiency of
41 the trust fund. In addition to the requirements of this subsection,
42 the assuming insurer shall provide any additional information,
43 which may include, but may not be limited to, information
44 regarding the concentration of the insurer's exposures, geographic
45 or otherwise, and satisfy such additional requirements as the
46 commissioner deems necessary to ensure that the particular insurer's
47 condition and methods of operation are not such as would render its
48 operations hazardous to the public or policyholders in this State.

1 (1) In the case of a single assuming insurer, the trust shall
2 consist of a trusteed account representing the assuming insurer's
3 liabilities attributable to business written in the United States and in
4 addition, the assuming insurer shall maintain a trusteed surplus of
5 not less than \$20,000,000.

6 (2) In the case of a group of insurers, which group includes
7 individual unincorporated underwriters, the trust shall consist of a
8 trusteed account representing the group's liabilities attributable to
9 business written in the United States and, in addition, the group
10 shall maintain a trusteed surplus of which not less than
11 \$100,000,000 shall be held jointly for the benefit of United States
12 ceding insurers of any member of the group; and the group shall
13 make available to the commissioner an annual certification of the
14 solvency of each underwriter for the fiscal period immediately
15 preceding, which shall not be less than one year, by the group's
16 domiciliary regulator and its independent certified public
17 accountant.

18 (3) In the case of a group of incorporated insurers under
19 common administration which complies with the filing
20 requirements contained in this section, has continuously transacted
21 an insurance business outside the United States for at least three
22 years immediately prior to making application for accreditation,
23 submits to this State's authority to examine its books and records
24 and bears the expense of the examination, and which has aggregate
25 policyholders' surplus of not less than \$10,000,000,000: the trust
26 shall be in an amount equal to the group's several liabilities
27 attributable to business ceded by United States ceding insurers to
28 any member of the group pursuant to reinsurance contracts issued in
29 the name of such group; plus a joint trusteed surplus of which not
30 less than \$100,000,000 shall be held jointly and exclusively for the
31 benefit of United States ceding insurers of any member of the group
32 as additional security for any such liabilities; and each member of
33 the group shall make available to the commissioner an annual
34 certification of the member's solvency for the fiscal period
35 immediately preceding, which shall not be less than one year, by the
36 member's domiciliary regulator and its independent certified public
37 accountant.

38 Any trust established pursuant to this subsection shall be in a
39 form approved by the commissioner, and the content, location, legal
40 currency and financial institutions shall be acceptable to the
41 commissioner. The trust instrument shall provide that contested
42 claims shall be valid and enforceable upon the final order of any
43 court of competent jurisdiction in the United States. The trust shall
44 vest legal title to its assets in the trustees of the trust for its United
45 States policyholders and ceding insurers, their assigns and
46 successors in interest. The trust and the assuming insurer shall be
47 subject to examination as determined by the commissioner. The
48 trust shall remain in effect for as long as the assuming insurer has

1 outstanding obligations due under the reinsurance agreements
2 subject to the trust. No later than February 28 of each year the
3 trustees of the trust shall report to the commissioner in writing
4 setting forth the balance of the trust and listing the trust's
5 investments at the preceding year's end and shall certify the date of
6 termination of the trust, if so planned, or certify that the trust shall
7 not expire prior to the next following December 31; or

8 e. The commissioner may, in his discretion, allow credit for
9 reinsurance if the reinsurance is ceded to an assuming insurer not
10 meeting the requirements of subsection a., b., c. or d. of this section
11 but only with respect to the insurance of risks located in
12 jurisdictions where such reinsurance is required or provided by
13 applicable law or regulation of that jurisdiction ; or

14 f. The commissioner may, in his discretion, allow credit for
15 reinsurance if the reinsurance is ceded to an assuming insurer not
16 meeting the requirements of subsection a., b., c. or d. of this section
17 but only if the assuming insurer holds surplus or equivalent in
18 excess of \$250,000,000 ² ¹and only if the reinsurance is negotiated
19 at least in part by a reinsurance intermediary or representative of the
20 reinsurer acting in this State¹ ². In determining whether credit
21 should be allowed, the commissioner shall consider the following:
22 (1) that the reinsurer has a secure financial strength rating from at
23 least two nationally recognized statistical rating organizations
24 deemed acceptable by the commissioner; (2) the domiciliary
25 regulatory jurisdiction of the assuming insurer; (3) the structure and
26 authority of the domiciliary regulator with regard to solvency
27 regulation requirements and the financial surveillance of the
28 reinsurer; (4) the substance of financial and operating standards for
29 reinsurers in the domiciliary jurisdiction; (5) the form and substance
30 of financial reports required to be filed by the reinsurer in the
31 domiciliary jurisdiction or other public financial statements filed in
32 accordance with generally accepted accounting principles; (6) the
33 domiciliary regulator's willingness to cooperate with United States
34 regulators in general and the commissioner, in particular; (7) the
35 history of performance by reinsurers in the domiciliary jurisdiction;
36 (8) ¹the reinsurer's ²or an affiliate's² use of in-State professional
37 service providers ²[to carry out the business services]² related ²or
38 unrelated² to the reinsurance, including, but not limited to,
39 attorneys, accountants, managers, actuaries, brokers or
40 intermediaries; (9)¹ any documented evidence of substantial
41 problems with the enforcement of valid United States judgments in
42 the domiciliary jurisdiction; and ¹[(9)] (10)¹ any other matters
43 deemed relevant by the commissioner. The commissioner shall
44 give appropriate consideration to insurer group ratings that may
45 have been issued. The commissioner may, in lieu of granting full
46 credit under this subsection, reduce the amount required to be held
47 in trust under subsection d. of this section.

1 The provisions of this subsection shall apply only to reinsurance
2 contracts entered into or renewed on or after the effective date of
3 P.L. , c. (pending before the Legislature as this bill), except that
4 the provisions applicable to life reinsurance contracts shall not
5 become effective until the earlier of 24 months from the effective
6 date of P.L. , c. (pending before the Legislature as this bill), or
7 the implementation of principles-based standards of life insurance
8 reserving by the National Association of Insurance Commissioners .

9 g. If the assuming insurer is not licensed or accredited to
10 transact insurance or reinsurance in this State, the credit permitted
11 by subsections c. and d. of this section shall not be allowed unless
12 the assuming insurer agrees in the reinsurance agreements: (1) that
13 in the event of the failure of the assuming insurer to perform its
14 obligations under the terms of the reinsurance agreement, the
15 assuming insurer, at the request of the ceding insurer, shall submit
16 to the jurisdiction of any court of competent jurisdiction in any state
17 of the United States, shall comply with all requirements necessary
18 to give such court jurisdiction, and shall abide by the final decision
19 of such court or any appellate court in the event of an appeal; and
20 (2) to designate the commissioner or a designated attorney as its
21 true and lawful attorney upon whom may be served any lawful
22 process in any action, suit or proceeding instituted by or on behalf
23 of the ceding company. This provision is not intended to conflict
24 with or override the obligation of the parties to a reinsurance
25 agreement to arbitrate their disputes, if such an obligation is created
26 in the agreement.

27 (cf: P.L.1993, c.243, s.2)

28
29 ¹5. Section 11 of P.L.1960, c.32 (C.17:22-6.45) is amended to
30 read as follows:

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

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

39 (b) The insurer must be currently an authorized insurer in the
40 state or country of its domicile as to the kind or kinds of insurance
41 proposed to be so placed, and must have been such an insurer for
42 not less than one full year preceding; or must be the subsidiary of
43 an admitted insurer or of an already eligible surplus lines insurer
44 that has been so admitted or eligible for a period of not less than
45 one full year preceding or must be a domestic surplus lines insurer
46 as provided by section 2 of P.L. c. (C.) (pending before the
47 Legislature as this bill);

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

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

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

1 exchange created by the laws of an individual state may be
2 approved by the commissioner as an eligible insurer under the
3 provisions of this section, and shall maintain capital and surplus, or
4 the substantial equivalent thereof, of not less than \$35,000,000.00
5 in the aggregate. For insurance exchanges which maintain funds in
6 an amount acceptable to the commissioner for the protection of all
7 insurance exchange policyholders, each individual syndicate, except
8 those syndicates which have elected and qualify for S corporation
9 status pursuant to subsection (a) of section 1362 of the federal
10 Internal Revenue Code of 1986, 26 U.S.C. 1362, shall maintain
11 minimum capital and surplus, or the substantial equivalent thereof,
12 of not less than \$2,000,000.00. Any syndicate which has elected and
13 qualified for S corporation status pursuant to subsection (a) of
14 section 1362 of the federal Internal Revenue Code of 1986, 26
15 U.S.C. 1362, need not maintain the minimum capital and surplus
16 required under the provisions of this section and the failure of any
17 such syndicate to meet these minimum requirements shall not
18 render the exchange ineligible for approval under this section;
19 except that so long as such syndicate fails to maintain the minimum
20 capital and surplus required under the provisions of this section,
21 such syndicate shall not transact the business of insurance in this
22 State and shall not be approved by the commissioner as an eligible
23 insurer under the provisions of this section. In the event the
24 insurance exchange does not maintain funds in an amount
25 acceptable to the commissioner for the protection of all insurance
26 exchange policyholders, each individual syndicate shall have capital
27 and surplus, or its equivalent under the laws of its domiciliary
28 jurisdiction, which is not less than twice the amount of minimum
29 capital and surplus required for like admitted insurers. No
30 insurance exchange approved as an eligible insurer by the
31 commissioner shall be a member of the New Jersey Surplus Lines
32 Insurance Guaranty Fund created pursuant to P.L.1984, c.101
33 (C.17:22-6.70 et seq.) nor shall any claim against an exchange be
34 deemed to be a covered claim pursuant to the provision of that act;
35 and

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

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

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

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

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

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

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

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

43 Where it appears that any particular insurance risk which is
44 eligible for export, but insurance coverage thereon, in whole or in
45 part, is not procurable from the eligible surplus lines insurers, then
46 the surplus lines agent may file a supplemental affidavit stating
47 such facts and advising the commissioner that such part of the risk
48 as shall be unprocurable, as aforesaid, is being placed with named

1 unauthorized insurers, in the amounts and percentages set forth in
2 the affidavit. Such named unauthorized insurer shall, however,
3 before accepting any risk in this State, deposit with the
4 commissioner United States government bonds in an amount
5 acceptable to the commissioner, which shall be held by said
6 commissioner for the benefit of New Jersey policyholders only and
7 the surplus lines agent shall procure from such unauthorized insurer
8 and file with the commissioner a certified copy of its current annual
9 statement of financial condition. If such deposit is made and the
10 statement reveals, including both capital and surplus, net assets of
11 at least \$5,000,000 consisting of at least \$1,500,000 liquid assets,
12 then the surplus lines agent may proceed to consummate the
13 contract of insurance. Whenever any insurance risk or any part
14 thereof is placed with an unauthorized insurer, as provided herein,
15 the policy, binder or cover note shall bear conspicuously on its face
16 in boldface type the following notation:

17 "All or some of the insurers participating in this risk have not
18 been admitted to transact business in the State of New Jersey, nor
19 have they been approved as a surplus lines insurer by the insurance
20 commissioner of this State. The placing of such insurance by a duly
21 licensed surplus lines agent in this State shall not be construed as
22 approval of such insurer by the insurance commissioner of the State
23 of New Jersey. Such insurance is not covered by the New Jersey
24 Property-Liability Insurance Guaranty Association or the New
25 Jersey Surplus Lines Insurance Guaranty Fund." All other
26 provisions of this Title , except the provisions of P.L.1984, c.101
27 (C.17:22-6.70 et seq.), shall apply to such placement the same as if
28 such risks were placed with an eligible surplus lines insurer.¹
29 (cf: P.L.1996, c.69, s.4)

30

31 ¹[4.] 6.¹ This act shall take effect on the 90th day after
32 enactment but the commissioner may take such anticipatory
33 administrative action in advance as shall be necessary for the
34 implementation of this act.

35

36

37

38

39 The "Reinsurance and Surplus Lines Stimulus and Enhancement
40 Act."

ASSEMBLY, No. 2670

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 13, 2010

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman DENISE M. COYLE

District 16 (Morris and Somerset)

Co-Sponsored by:

Assemblyman Chivukula

SYNOPSIS

The “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/11/2010)

1 AN ACT concerning reinsurance and surplus lines requirements,
2 supplementing P.L.1960, c.32 (C.17:22-6.40 et seq.) and
3 amending P.L.1993, c.243.

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

7
8 1. (New section) Sections 1 and 2 of this amendatory and
9 supplementary act shall be known and may be cited as the
10 “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

11
12 2. (New section) a. Notwithstanding any other provision of law
13 to the contrary, a domestic insurer possessing policyholder surplus
14 of at least \$15,000,000 may, pursuant to a resolution by its board of
15 directors, and upon the written approval of the Commissioner of
16 Banking and Insurance, be designated as a domestic surplus lines
17 insurer.

18 b. A domestic surplus lines insurer shall only insure in this State
19 a New Jersey risk procured from a surplus lines producer in
20 accordance with the provisions of “the surplus lines law,” P.L.
21 1960, c.32 (C. 17:22-6.40 et seq.).

22 c. A domestic surplus lines insurer shall not issue policies of
23 private passenger automobile insurance, workers’ compensation or
24 workers’ occupational disease insurance.

25
26 3. Section 2 of P.L.1993, c.243 (C.17:51B-2) is amended to read
27 as follows:

28 2. Credit for reinsurance ceded by an insurer which is domiciled
29 in New Jersey, or which is either licensed in New Jersey or eligible
30 to write surplus lines insurance in New Jersey and which in either
31 case is domiciled in a state or country which does not employ
32 standards regarding credit for reinsurance substantially similar, as
33 determined by the commissioner, to those applicable under this act,
34 shall be allowed as either an asset or a deduction from liability only
35 when:

36 a. The reinsurance is ceded to an assuming insurer which is
37 licensed to transact insurance or reinsurance in this State; or

38 b. The reinsurance is ceded to an assuming insurer which is
39 accredited as a reinsurer in this State. An accredited reinsurer is
40 one which:

41 (1) Files with the commissioner evidence of its submission to
42 this State's jurisdiction;

43 (2) Submits to this State's authority to examine its books and
44 records;

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 underlined thus is new matter.

1 (3) Is licensed to transact insurance or reinsurance in at least one
2 state, or in the case of a United States branch of an assuming alien
3 insurer, is entered through, and licensed to transact insurance or
4 reinsurance in, at least one state;

5 (4) Files annually with the commissioner a copy of its annual
6 statement filed with the insurance department or other regulatory
7 authority of its state of domicile and a copy of its most recent
8 audited financial statement; and either:

9 (a) Maintains a surplus in regard to policyholders in an amount
10 which is not less than \$20,000,000 and whose accreditation has not
11 been denied by the commissioner within 120 days of its submission
12 therefor; or

13 (b) Maintains a surplus in regard to policyholders in an amount
14 less than \$20,000,000 and whose accreditation has been approved
15 by the commissioner;

16 (5) Submits a filing fee in an amount established by the
17 commissioner; and

18 (6) Provides any additional information, which may include, but
19 may not be limited to, information regarding the concentration of
20 the insurer's exposures, geographic or otherwise, and satisfies such
21 additional requirements as the commissioner deems necessary to
22 ensure that the particular insurer's condition and methods of
23 operation are not such as would render its operations hazardous to
24 the public or policyholders in this State.

25 No credit shall be allowed a ceding licensed insurer or
26 unauthorized eligible surplus lines insurer if the assuming insurer's
27 accreditation has been revoked by the commissioner after notice
28 and hearing; or

29 c. The reinsurance is ceded to an assuming insurer which is
30 domiciled and licensed in, or in the case of a United States branch
31 of an assuming alien insurer, is entered through, a state which
32 employs standards regarding credit for reinsurance substantially
33 similar to those applicable under this act, as determined by the
34 commissioner, and that assuming insurer or United States branch of
35 an assuming alien insurer:

36 (1) Maintains a surplus in regard to policyholders in an amount
37 of not less than \$20,000,000;

38 (2) Submits to the authority of this State to examine its books
39 and records; and

40 (3) Provides any additional information, which may include, but
41 may not be limited to, information regarding the concentration of
42 the insurer's exposures, geographic or otherwise, and satisfies such
43 additional requirements as the commissioner deems necessary to
44 ensure that the particular insurer's condition and methods of
45 operation are not such as would render its operations hazardous to
46 the public or policyholders in this State; except that the requirement
47 of paragraph (1) of this subsection shall not apply to reinsurance

1 ceded and assumed pursuant to pooling arrangements among
2 insurers in the same holding company system; or

3 d. The reinsurance is ceded to an assuming insurer which
4 maintains a trust fund in a qualified United States financial
5 institution for the payment of the valid claims of its United States
6 policyholders and ceding insurers, their assigns and successors in
7 interest. The assuming insurer shall report annually to the
8 commissioner information substantially the same as that required to
9 be reported on the NAIC Annual Statement form by licensed
10 insurers to enable the commissioner to determine the sufficiency of
11 the trust fund. In addition to the requirements of this subsection,
12 the assuming insurer shall provide any additional information,
13 which may include, but may not be limited to, information
14 regarding the concentration of the insurer's exposures, geographic
15 or otherwise, and satisfy such additional requirements as the
16 commissioner deems necessary to ensure that the particular insurer's
17 condition and methods of operation are not such as would render its
18 operations hazardous to the public or policyholders in this State.

19 (1) In the case of a single assuming insurer, the trust shall
20 consist of a trusteed account representing the assuming insurer's
21 liabilities attributable to business written in the United States and in
22 addition, the assuming insurer shall maintain a trusteed surplus of
23 not less than \$20,000,000.

24 (2) In the case of a group of insurers, which group includes
25 individual unincorporated underwriters, the trust shall consist of a
26 trusteed account representing the group's liabilities attributable to
27 business written in the United States and, in addition, the group
28 shall maintain a trusteed surplus of which not less than
29 \$100,000,000 shall be held jointly for the benefit of United States
30 ceding insurers of any member of the group; and the group shall
31 make available to the commissioner an annual certification of the
32 solvency of each underwriter for the fiscal period immediately
33 preceding, which shall not be less than one year, by the group's
34 domiciliary regulator and its independent certified public
35 accountant.

36 (3) In the case of a group of incorporated insurers under
37 common administration which complies with the filing
38 requirements contained in this section, has continuously transacted
39 an insurance business outside the United States for at least three
40 years immediately prior to making application for accreditation,
41 submits to this State's authority to examine its books and records
42 and bears the expense of the examination, and which has aggregate
43 policyholders' surplus of not less than \$10,000,000,000: the trust
44 shall be in an amount equal to the group's several liabilities
45 attributable to business ceded by United States ceding insurers to
46 any member of the group pursuant to reinsurance contracts issued in
47 the name of such group; plus a joint trusteed surplus of which not
48 less than \$100,000,000 shall be held jointly and exclusively for the

1 benefit of United States ceding insurers of any member of the group
2 as additional security for any such liabilities; and each member of
3 the group shall make available to the commissioner an annual
4 certification of the member's solvency for the fiscal period
5 immediately preceding, which shall not be less than one year, by the
6 member's domiciliary regulator and its independent certified public
7 accountant.

8 Any trust established pursuant to this subsection shall be in a
9 form approved by the commissioner, and the content, location,
10 legal currency and financial institutions shall be acceptable to the
11 commissioner. The trust instrument shall provide that contested
12 claims shall be valid and enforceable upon the final order of any
13 court of competent jurisdiction in the United States. The trust shall
14 vest legal title to its assets in the trustees of the trust for its United
15 States policyholders and ceding insurers, their assigns and
16 successors in interest. The trust and the assuming insurer shall be
17 subject to examination as determined by the commissioner. The
18 trust shall remain in effect for as long as the assuming insurer has
19 outstanding obligations due under the reinsurance agreements
20 subject to the trust. No later than February 28 of each year the
21 trustees of the trust shall report to the commissioner in writing
22 setting forth the balance of the trust and listing the trust's
23 investments at the preceding year's end and shall certify the date of
24 termination of the trust, if so planned, or certify that the trust shall
25 not expire prior to the next following December 31; or

26 e. The commissioner may, in his discretion, allow credit for
27 reinsurance if the reinsurance is ceded to an assuming insurer not
28 meeting the requirements of subsection a., b., c. or d. of this section
29 but only with respect to the insurance of risks located in
30 jurisdictions where such reinsurance is required or provided by
31 applicable law or regulation of that jurisdiction ; or

32 f. The commissioner may, in his discretion, allow credit for
33 reinsurance if the reinsurance is ceded to an assuming insurer not
34 meeting the requirements of subsection a., b., c. or d. of this section
35 but only if the assuming insurer holds surplus or equivalent in
36 excess of \$250,000,000. In determining whether credit should be
37 allowed, the commissioner shall consider the following: (1) that
38 the reinsurer has a secure financial strength rating from at least two
39 nationally recognized statistical rating organizations deemed
40 acceptable by the commissioner; (2) the domiciliary regulatory
41 jurisdiction of the assuming insurer; (3) the structure and authority
42 of the domiciliary regulator with regard to solvency regulation
43 requirements and the financial surveillance of the reinsurer; (4) the
44 substance of financial and operating standards for reinsurers in the
45 domiciliary jurisdiction; (5) the form and substance of financial
46 reports required to be filed by the reinsurer in the domiciliary
47 jurisdiction or other public financial statements filed in accordance
48 with generally accepted accounting principles; (6) the domiciliary

1 regulator's willingness to cooperate with United States regulators in
2 general and the commissioner, in particular; (7) the history of
3 performance by reinsurers in the domiciliary jurisdiction; (8) any
4 documented evidence of substantial problems with the enforcement
5 of valid United States judgments in the domiciliary jurisdiction; and
6 (9) any other matters deemed relevant by the commissioner. The
7 commissioner shall give appropriate consideration to insurer group
8 ratings that may have been issued. The commissioner may, in lieu
9 of granting full credit under this subsection, reduce the amount
10 required to be held in trust under subsection d. of this section.

11 The provisions of this subsection shall apply only to reinsurance
12 contracts entered into or renewed on or after the effective date of
13 P.L. _____, c. _____ (pending before the Legislature as this bill), except
14 that the provisions applicable to life reinsurance contracts shall not
15 become effective until the earlier of 24 months from the effective
16 date of P.L. _____, c. _____ (pending before the Legislature as this bill),
17 or the implementation of principles-based standards of life
18 insurance reserving by the National Association of Insurance
19 Commissioners .

20 g. If the assuming insurer is not licensed or accredited to transact
21 insurance or reinsurance in this State, the credit permitted by
22 subsections c. and d. of this section shall not be allowed unless the
23 assuming insurer agrees in the reinsurance agreements: (1) that in
24 the event of the failure of the assuming insurer to perform its
25 obligations under the terms of the reinsurance agreement, the
26 assuming insurer, at the request of the ceding insurer, shall submit
27 to the jurisdiction of any court of competent jurisdiction in any state
28 of the United States, shall comply with all requirements necessary
29 to give such court jurisdiction, and shall abide by the final decision
30 of such court or any appellate court in the event of an appeal; and
31 (2) to designate the commissioner or a designated attorney as its
32 true and lawful attorney upon whom may be served any lawful
33 process in any action, suit or proceeding instituted by or on behalf
34 of the ceding company. This provision is not intended to conflict
35 with or override the obligation of the parties to a reinsurance
36 agreement to arbitrate their disputes, if such an obligation is created
37 in the agreement.

38 (cf: P.L.1993, c.243, s.2)

39

40 4. This act shall take effect on the 90th day after enactment but
41 the commissioner may take such anticipatory administrative action
42 in advance as shall be necessary for the implementation of this act.

43

44

45

STATEMENT

46

47 This bill, the "Reinsurance and Surplus Lines Stimulus
48 Enhancement Act," provides incentives for surplus lines insurers

1 and reinsurers that are financially sound to do business in New
2 Jersey.

3 The bill establishes a process, under the oversight of the
4 Commissioner of Banking and Insurance, for a domestic insurer
5 with policyholder surplus in excess of \$15,000,000 to be designated
6 as a domestic surplus lines insurer. Under this designation, a
7 domestic surplus lines insurer could only insure New Jersey risks
8 procured from a surplus lines producer in accordance with the
9 provisions of “the surplus lines law,” P.L.1960, c.32 (C. 17:22-6.40
10 et seq.). A domestic surplus lines insurer could not issue policies of
11 private passenger automobile insurance, workers’ compensation or
12 workers’ occupational disease insurance.

13 The bill also permits the commissioner, in the commissioner’s
14 discretion, to allow credit for reinsurance if the reinsurance is ceded
15 to an assuming insurer that holds surplus or the equivalent in excess
16 of \$250,000,000. In determining whether credit should be allowed,
17 the commissioner shall consider certain requirements enumerated in
18 the bill, which largely relate to the adequacy of the regulatory
19 authority in the insurer’s domiciliary jurisdiction.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2670

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 2670.

This bill, the “Reinsurance and Surplus Lines Stimulus Enhancement Act,” as amended, provides incentives for surplus lines insurers and reinsurers that are financially sound to do business in New Jersey.

The bill establishes a process, under the oversight of the Commissioner of Banking and Insurance, for a domestic insurer with policyholder surplus in excess of \$15,000,000 to be designated as a domestic surplus lines insurer, which shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage. Insurance written by a domestic lines insurer shall be subject to the existing premium tax for surplus lines coverage.

Under this designation, a domestic surplus lines insurer could only insure New Jersey risks procured from a surplus lines agent in accordance with the provisions of “the surplus lines law,” P.L.1960, c.32 (C. 17:22-6.40 et seq.). A domestic surplus lines insurer could not issue policies of private passenger automobile insurance, workers’ compensation or workers’ occupational disease insurance.

The bill also proves that whenever any insurance risk is placed with a domestic surplus lines insurer, the policy holder must receive certain written disclosures, including that the policy is not covered by the New Jersey Property – Liability Guaranty Association, but may be covered to an extent by the New Jersey Surplus Lines Guaranty Association.

The bill also permits the commissioner, in the commissioner’s discretion, to allow credit for reinsurance if the reinsurance is ceded to an assuming insurer that holds surplus or the equivalent in excess of \$250,000,000. In determining whether credit should be allowed, the commissioner shall consider certain requirements enumerated in the bill, which largely relate to the adequacy of the regulatory authority in the insurer’s domiciliary jurisdiction.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) clarify that a domestic surplus lines insurer, designated by the Commissioner of Banking and Insurance under the terms of the bill, shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage;

(2) clarify that coverage written through a domestic surplus lines insurer is subject to the existing premium tax for surplus lines coverage;

(3) require certain disclosures to policyholders of domestic surplus lines insurers, including disclosure as to the status of insurance guaranty fund coverage; and

(4) adds a certain condition on the commissioner's determination as to whether to allow for reinsurance if reinsurance is ceded to an assuming insurer, relating to the reinsurer's use of in-State professional service providers to carry out the business services related to the reinsurance.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 2670

with Assembly Floor Amendments
(Proposed by Assemblyman SCHAER and Assemblywoman

ADOPTED: JUNE 28, 2010

The amendments remove, as to certain circumstances in which the Commissioner of Banking and Insurance may allow credit for reinsurance ceded to an assuming insurer, a condition that the reinsurance is negotiated at least in part by a reinsurance intermediary or representative of the reinsurer acting in the State.

The amendments also revise one of the factors that the commissioner must consider in determining whether to allow credit for reinsurance ceded to an assuming insurer. Specifically, the revised factor is amended to require the commissioner to consider: (1) the use of in-State professional service providers by an affiliate of the reinsurer, in addition to the reinsurer's use of those providers; and (2) the use of in-State professional service providers, regardless of whether their services are used to carry out business services related to reinsurance.

SENATE, No. 2010

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 27, 2010

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

The “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2010)

1 AN ACT concerning reinsurance and surplus lines requirements,
2 supplementing P.L.1960, c.32 (C.17:22-6.40 et seq.) and
3 amending P.L.1993, c.243.

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

7
8 1. (New section) Sections 1 and 2 of this amendatory and
9 supplementary act shall be known and may be cited as the
10 “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

11
12 2. (New section) a. Notwithstanding any other provision of
13 law to the contrary, a domestic insurer possessing policyholder
14 surplus of at least \$15,000,000 may, pursuant to a resolution by its
15 board of directors, and upon the written approval of the
16 Commissioner of Banking and Insurance, be designated as a
17 domestic surplus lines insurer.

18 b. A domestic surplus lines insurer shall only insure in this
19 State a New Jersey risk procured from a surplus lines producer in
20 accordance with the provisions of “the surplus lines law,” P.L.
21 1960, c.32 (C. 17:22-6.40 et seq.).

22 c. A domestic surplus lines insurer shall not issue policies of
23 private passenger automobile insurance, workers’ compensation or
24 workers’ occupational disease insurance.

25
26 3. Section 2 of P.L.1993, c.243 (C.17:51B-2) is amended to
27 read as follows:

28 2. Credit for reinsurance ceded by an insurer which is
29 domiciled in New Jersey, or which is either licensed in New Jersey
30 or eligible to write surplus lines insurance in New Jersey and which
31 in either case is domiciled in a state or country which does not
32 employ standards regarding credit for reinsurance substantially
33 similar, as determined by the commissioner, to those applicable
34 under this act, shall be allowed as either an asset or a deduction
35 from liability only when:

36 a. The reinsurance is ceded to an assuming insurer which is
37 licensed to transact insurance or reinsurance in this State; or

38 b. The reinsurance is ceded to an assuming insurer which is
39 accredited as a reinsurer in this State. An accredited reinsurer is
40 one which:

41 (1) Files with the commissioner evidence of its submission to
42 this State's jurisdiction;

43 (2) Submits to this State's authority to examine its books and
44 records;

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 underlined thus is new matter.

1 (3) Is licensed to transact insurance or reinsurance in at least
2 one state, or in the case of a United States branch of an assuming
3 alien insurer, is entered through, and licensed to transact insurance
4 or reinsurance in, at least one state;

5 (4) Files annually with the commissioner a copy of its annual
6 statement filed with the insurance department or other regulatory
7 authority of its state of domicile and a copy of its most recent
8 audited financial statement; and either:

9 (a) Maintains a surplus in regard to policyholders in an amount
10 which is not less than \$20,000,000 and whose accreditation has not
11 been denied by the commissioner within 120 days of its submission
12 therefor; or

13 (b) Maintains a surplus in regard to policyholders in an amount
14 less than \$20,000,000 and whose accreditation has been approved
15 by the commissioner;

16 (5) Submits a filing fee in an amount established by the
17 commissioner; and

18 (6) Provides any additional information, which may include, but
19 may not be limited to, information regarding the concentration of
20 the insurer's exposures, geographic or otherwise, and satisfies such
21 additional requirements as the commissioner deems necessary to
22 ensure that the particular insurer's condition and methods of
23 operation are not such as would render its operations hazardous to
24 the public or policyholders in this State.

25 No credit shall be allowed a ceding licensed insurer or
26 unauthorized eligible surplus lines insurer if the assuming insurer's
27 accreditation has been revoked by the commissioner after notice
28 and hearing; or

29 c. The reinsurance is ceded to an assuming insurer which is
30 domiciled and licensed in, or in the case of a United States branch
31 of an assuming alien insurer, is entered through, a state which
32 employs standards regarding credit for reinsurance substantially
33 similar to those applicable under this act, as determined by the
34 commissioner, and that assuming insurer or United States branch of
35 an assuming alien insurer:

36 (1) Maintains a surplus in regard to policyholders in an amount
37 of not less than \$20,000,000;

38 (2) Submits to the authority of this State to examine its books
39 and records; and

40 (3) Provides any additional information, which may include, but
41 may not be limited to, information regarding the concentration of
42 the insurer's exposures, geographic or otherwise, and satisfies such
43 additional requirements as the commissioner deems necessary to
44 ensure that the particular insurer's condition and methods of
45 operation are not such as would render its operations hazardous to
46 the public or policyholders in this State; except that the requirement
47 of paragraph (1) of this subsection shall not apply to reinsurance

1 ceded and assumed pursuant to pooling arrangements among
2 insurers in the same holding company system; or

3 d. The reinsurance is ceded to an assuming insurer which
4 maintains a trust fund in a qualified United States financial
5 institution for the payment of the valid claims of its United States
6 policyholders and ceding insurers, their assigns and successors in
7 interest. The assuming insurer shall report annually to the
8 commissioner information substantially the same as that required to
9 be reported on the NAIC Annual Statement form by licensed
10 insurers to enable the commissioner to determine the sufficiency of
11 the trust fund. In addition to the requirements of this subsection,
12 the assuming insurer shall provide any additional information,
13 which may include, but may not be limited to, information
14 regarding the concentration of the insurer's exposures, geographic
15 or otherwise, and satisfy such additional requirements as the
16 commissioner deems necessary to ensure that the particular insurer's
17 condition and methods of operation are not such as would render its
18 operations hazardous to the public or policyholders in this State.

19 (1) In the case of a single assuming insurer, the trust shall
20 consist of a trusteed account representing the assuming insurer's
21 liabilities attributable to business written in the United States and in
22 addition, the assuming insurer shall maintain a trusteed surplus of
23 not less than \$20,000,000.

24 (2) In the case of a group of insurers, which group includes
25 individual unincorporated underwriters, the trust shall consist of a
26 trusteed account representing the group's liabilities attributable to
27 business written in the United States and, in addition, the group
28 shall maintain a trusteed surplus of which not less than
29 \$100,000,000 shall be held jointly for the benefit of United States
30 ceding insurers of any member of the group; and the group shall
31 make available to the commissioner an annual certification of the
32 solvency of each underwriter for the fiscal period immediately
33 preceding, which shall not be less than one year, by the group's
34 domiciliary regulator and its independent certified public
35 accountant.

36 (3) In the case of a group of incorporated insurers under
37 common administration which complies with the filing
38 requirements contained in this section, has continuously transacted
39 an insurance business outside the United States for at least three
40 years immediately prior to making application for accreditation,
41 submits to this State's authority to examine its books and records
42 and bears the expense of the examination, and which has aggregate
43 policyholders' surplus of not less than \$10,000,000,000: the trust
44 shall be in an amount equal to the group's several liabilities
45 attributable to business ceded by United States ceding insurers to
46 any member of the group pursuant to reinsurance contracts issued in
47 the name of such group; plus a joint trusteed surplus of which not
48 less than \$100,000,000 shall be held jointly and exclusively for the

1 benefit of United States ceding insurers of any member of the group
2 as additional security for any such liabilities; and each member of
3 the group shall make available to the commissioner an annual
4 certification of the member's solvency for the fiscal period
5 immediately preceding, which shall not be less than one year, by the
6 member's domiciliary regulator and its independent certified public
7 accountant.

8 Any trust established pursuant to this subsection shall be in a
9 form approved by the commissioner, and the content, location,
10 legal currency and financial institutions shall be acceptable to the
11 commissioner. The trust instrument shall provide that contested
12 claims shall be valid and enforceable upon the final order of any
13 court of competent jurisdiction in the United States. The trust shall
14 vest legal title to its assets in the trustees of the trust for its United
15 States policyholders and ceding insurers, their assigns and
16 successors in interest. The trust and the assuming insurer shall be
17 subject to examination as determined by the commissioner. The
18 trust shall remain in effect for as long as the assuming insurer has
19 outstanding obligations due under the reinsurance agreements
20 subject to the trust. No later than February 28 of each year the
21 trustees of the trust shall report to the commissioner in writing
22 setting forth the balance of the trust and listing the trust's
23 investments at the preceding year's end and shall certify the date of
24 termination of the trust, if so planned, or certify that the trust shall
25 not expire prior to the next following December 31; or

26 e. The commissioner may, in his discretion, allow credit for
27 reinsurance if the reinsurance is ceded to an assuming insurer not
28 meeting the requirements of subsection a., b., c. or d. of this section
29 but only with respect to the insurance of risks located in
30 jurisdictions where such reinsurance is required or provided by
31 applicable law or regulation of that jurisdiction ; or

32 f. The commissioner may, in his discretion, allow credit for
33 reinsurance if the reinsurance is ceded to an assuming insurer not
34 meeting the requirements of subsection a., b., c. or d. of this section
35 but only if the assuming insurer holds surplus or equivalent in
36 excess of \$250,000,000. In determining whether credit should be
37 allowed, the commissioner shall consider the following: (1) that
38 the reinsurer has a secure financial strength rating from at least two
39 nationally recognized statistical rating organizations deemed
40 acceptable by the commissioner; (2) the domiciliary regulatory
41 jurisdiction of the assuming insurer; (3) the structure and authority
42 of the domiciliary regulator with regard to solvency regulation
43 requirements and the financial surveillance of the reinsurer; (4) the
44 substance of financial and operating standards for reinsurers in the
45 domiciliary jurisdiction; (5) the form and substance of financial
46 reports required to be filed by the reinsurer in the domiciliary
47 jurisdiction or other public financial statements filed in accordance
48 with generally accepted accounting principles; (6) the domiciliary

1 regulator's willingness to cooperate with United States regulators in
2 general and the commissioner, in particular; (7) the history of
3 performance by reinsurers in the domiciliary jurisdiction; (8) any
4 documented evidence of substantial problems with the enforcement
5 of valid United States judgments in the domiciliary jurisdiction; and
6 (9) any other matters deemed relevant by the commissioner. The
7 commissioner shall give appropriate consideration to insurer group
8 ratings that may have been issued. The commissioner may, in lieu
9 of granting full credit under this subsection, reduce the amount
10 required to be held in trust under subsection d. of this section.

11 The provisions of this subsection shall apply only to reinsurance
12 contracts entered into or renewed on or after the effective date of
13 P.L. _____, c. _____ (pending before the Legislature as this bill), except
14 that the provisions applicable to life reinsurance contracts shall not
15 become effective until the earlier of 24 months from the effective
16 date of P.L. _____, c. _____ (pending before the Legislature as this bill),
17 or the implementation of principles-based standards of life
18 insurance reserving by the National Association of Insurance
19 Commissioners .

20 g. If the assuming insurer is not licensed or accredited to
21 transact insurance or reinsurance in this State, the credit permitted
22 by subsections c. and d. of this section shall not be allowed unless
23 the assuming insurer agrees in the reinsurance agreements: (1) that
24 in the event of the failure of the assuming insurer to perform its
25 obligations under the terms of the reinsurance agreement, the
26 assuming insurer, at the request of the ceding insurer, shall submit
27 to the jurisdiction of any court of competent jurisdiction in any state
28 of the United States, shall comply with all requirements necessary
29 to give such court jurisdiction, and shall abide by the final decision
30 of such court or any appellate court in the event of an appeal; and
31 (2) to designate the commissioner or a designated attorney as its
32 true and lawful attorney upon whom may be served any lawful
33 process in any action, suit or proceeding instituted by or on behalf
34 of the ceding company. This provision is not intended to conflict
35 with or override the obligation of the parties to a reinsurance
36 agreement to arbitrate their disputes, if such an obligation is created
37 in the agreement.

38 (cf: P.L.1993, c.243, s.2)

39

40 4. This act shall take effect on the 90th day after enactment but
41 the commissioner may take such anticipatory administrative action
42 in advance as shall be necessary for the implementation of this act.

43

44

45

STATEMENT

46

47 This bill, the "Reinsurance and Surplus Lines Stimulus
48 Enhancement Act," provides incentives for surplus lines insurers

1 and reinsurers that are financially sound to do business in New
2 Jersey.

3 The bill establishes a process, under the oversight of the
4 Commissioner of Banking and Insurance, for a domestic insurer
5 with policyholder surplus in excess of \$15,000,000 to be designated
6 as a domestic surplus lines insurer. Under this designation, a
7 domestic surplus lines insurer could only insure New Jersey risks
8 procured from a surplus lines producer in accordance with the
9 provisions of “the surplus lines law,” P.L.1960, c.32 (C. 17:22-6.40
10 et seq.). A domestic surplus lines insurer could not issue policies of
11 private passenger automobile insurance, workers’ compensation or
12 workers’ occupational disease insurance.

13 The bill also permits the commissioner, in the commissioner’s
14 discretion, to allow credit for reinsurance if the reinsurance is ceded
15 to an assuming insurer that holds surplus or the equivalent in excess
16 of \$250,000,000. In determining whether credit should be allowed,
17 the commissioner shall consider certain requirements enumerated in
18 the bill, which largely relate to the adequacy of the regulatory
19 authority in the insurer’s domiciliary jurisdiction.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2010

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2010.

This bill, the “Reinsurance and Surplus Lines Stimulus Enhancement Act,” provides incentives for surplus lines insurers and reinsurers that are financially sound to do business in New Jersey.

The bill establishes a process, under the oversight of the Commissioner of Banking and Insurance, for a domestic insurer with policyholder surplus in excess of \$15,000,000 to be designated as a domestic surplus lines insurer. Under this designation, a domestic surplus lines insurer could only insure New Jersey risks procured from a surplus lines producer in accordance with the provisions of “the surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.). A domestic surplus lines insurer could not issue policies of private passenger automobile insurance, workers’ compensation or workers’ occupational disease insurance.

The bill also permits the commissioner, in the commissioner’s discretion, to allow credit for reinsurance if the reinsurance is ceded to an assuming insurer that holds surplus or the equivalent in excess of \$250,000,000. In determining whether credit should be allowed, the commissioner shall consider certain requirements enumerated in the bill, which largely relate to the adequacy of the regulatory authority in the insurer’s domiciliary jurisdiction.

The committee amendments to the bill:

(1) clarify that a domestic surplus lines insurer, designated by the Commissioner of Banking and Insurance under the terms of the bill, shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage;

(2) clarify that coverage written through a domestic surplus lines insurer is subject to the existing premium tax for surplus lines coverage;

(3) require certain disclosures to policyholders of domestic surplus lines insurers, including disclosure as to the status of insurance guaranty fund coverage; and

(4) add to the list of factors the commissioner must consider in determining whether to allow credit for reinsurance if the reinsurance

is ceded to an assuming insurer, the following: the reinsurer's or an affiliate's use of in-State professional service providers related or unrelated to the reinsurance, including, but not limited to, attorneys, accountants, managers, actuaries, brokers or intermediaries.