

17:22-6.41 ET AL

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:22-6.41 et al. (Insurance--surplus lines--various amendments)

LAWS 1981 CHAPTER 250

Bill No. A1951

Sponsor(s) Bornheimer and Deverin

Date Introduced July 28, 1980

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks. Substituted for S1427 (not attached since substantially same as A1951)

Date of Passage: Assembly Dec. 8, 1980

Senate May 4, 1981

Date of approval Aug. 6, 1981

Following statements are attached if available:

Sponsor statement Yes ~~No~~ (Below)

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ ^{Yes} ~~No~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

Sponsor's statement:

This bill amends the surplus lines law to clarify the requirements of that law with respect to binding risks and issuing evidence of coverage.

6/22/81

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ASSEMBLY, No. 1951

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen BORNHEIMER and DEVERIN

Referred to Committee on Banking and Insurance

AN ACT concerning surplus lines insurance, ***[and]*** amending and supplementing P. L. 1960, c. 32*, and making an appropriation therefor*.

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

1 1. Section 7 of P. L. 1960, c. 32 (C. 17:22-6.41) is amended to
2 read as follows:

3 7. As used in this surplus lines law:

4 (a) "Surplus lines agent" means an individual licensed as
5 provided in this chapter to handle the placement of insurance cov-
6 erages on behalf of unauthorized insurers.

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

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

13 (d) "Commissioner" means the Commissioner of **[Banking and]**
14 Insurance of the State of New Jersey.

15 (e) "Certificate of insurance" means permanent evidence of in-
16 surance *on a form approved by the commissioner and* issued by
17 a surplus lines agent who has filed evidence of his binding authority
18 with the commissioner on behalf of an alien insurer. When issued
19 other than on behalf of an alien insurer, the certificate of insurance
20 will be treated as temporary evidence of insurance, pending the
20A issuance of a policy.

21 (f) "Cover note," "binder" or "confirmation of insurance," means
22 temporary evidence of insurance, to be replaced by a policy or cer-
23 tificate of insurance.

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

1 2. Section 8 of P. L. 1960, c. 32 (C. 17:22-6.42) is amended to
2 read as follows:

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

8 (a) The insurance must be eligible for export under section 9
9 of this act;

10 (b) The insurer must be an eligible surplus lines insurer under
11 section 11 of this act;

12 (c) The insurance must be so placed through a licensed New
13 Jersey surplus lines agent whose office and records are maintained
14 in New Jersey; and

15 (d) Other applicable provisions of this surplus lines law must
16 be complied with.

17 (e) *No surplus lines agent shall exercise binding authority in
18 this State on behalf of any insurer unless the agent has first filed
19 with the commissioner ***[a copy of]*** *and the commissioner has
20 approved* the written agreement between the agent and the insurer
21 setting forth the terms, conditions and limitations governing the
22 exercise of the binding authority by the agent. A copy of any
23 amendments to the agreement and of any notice of cancellation or
24 termination of the agreement shall be filed by the agent with the
25 commissioner no later than ***[30]*** *5* days after adoption thereof.*

26 *The agreement filed pursuant to this section shall be considered
27 and treated as a confidential document, and shall not be available
28 for inspection by the public.*

29 *The agreement shall include the following items:*

30 (1) *A description of the classes of insurance for which the agent
31 holds binding authority;*

32 (2) *The geographical limits upon the exercise of binding au-
33 thority by the agent;*

34 (3) *The maximum dollar limitation on the binding authority of
35 the agent for any one risk for each class of insurance written by
36 the agent;*

37 (4) *The maximum policy period for which the agent may bind
38 a risk;*

39 (5) *If the binding authority is delegable by the agent, a prohibi-
40 tion against the delegation without the prior written approval of
41 the insurer****[;]**** **.**

42 ***[(6)** *A provision in the following or substantially comparable
43 language:*

44 *"It is understood and agreed that all insurance placed pur-*
 45 *suant to this agreement on subjects of insurance resident,*
 46 *located or to be performed in the State of New Jersey, shall be*
 47 *effected and written in accordance with the 'surplus lines*
 47A *law'. "】**

48 *If an agent who is qualified in accordance with this section to*
 49 *exercise binding authority on behalf of an insurer delegates the*
 50 *binding authority to any other agent, the agent to whom the au-*
 51 *thority is delegated shall not exercise the same until a copy of the*
 52 *instrument delegating the binding authority shall first have been*
 53 *filed with *and approved by* the commissioner. The instrument*
 54 *delegating the binding authority shall include an identification of*
 55 *the binding authority agreement between the delegating agent and*
 55A *the insurer.*

1 3. Section 13 of P. L. 1960, c. 32 (C. 17:22-6.47) is amended to
 2 read as follows:

3 13. Within **【21】** 30 *business* days after the effectuation of any
 4 surplus lines insurance the surplus lines agents shall file with the
 5 commissioner:

6 (a) A copy of the **【binder,】** cover note, certificate, policy or
 7 other confirmation of insurance showing the identity and location
 8 of the subject of the proposed insurance: name and address of the
 9 proposed insured; name of proposed insurer or insurers; perils to
 10 be covered; form or type of policy or contract under which to be
 11 insured; any special or additional coverages or conditions; amount
 12 of premium or rate, and such other pertinent information as the
 13 commissioner may reasonably require; and

14 (b) The affidavits of the broker and the surplus lines agent, on
 15 forms as prescribed and furnished by the commissioner, as to
 16 efforts made to place the coverage with authorized insurers and
 17 the results thereof, except that no such affidavit shall be required
 18 for those coverages, risks or classes of insurance declared eligible
 19 for export by the commissioner pursuant to section 9 of this act.

20 ****【(c)】**** *The affidavit of the broker in a surplus lines insurance*
 21 *transaction shall be filed with the surplus lines agent within 10 days*
 22 *of the effectuation of any surplus lines insurance placement. A*
 23 *broker who fails to file the affidavit within the prescribed time is*
 24 *subject to the penalties provided under section 27 of P. L. 1960, c. 32*
 25 *(C. 17:22-6.61).*

1 4. Section 16 of P. L. 1960, c. 32 (C. 17:22-6.50) is amended to
 2 read as follows:

3 16. ***【a.】*** Upon placing a surplus line coverage, the surplus lines
 4 agent shall promptly issue and deliver to the insured evidence of

5 the insurance consisting either of the policy as issued by the in-
 6 surer or, if such policy is not then available, a certificate of *insur-*
 7 *ance*, cover note, or other confirmation of insurance, *as provided*
 8 *in this act*. Such document shall be executed or countersigned by
 9 the surplus lines agent and shall show the description and location
 10 of the subject of the insurance, coverage, conditions and term of
 11 the insurance, the premium and rate charged and taxes collected
 12 from the insured, and the name and address of the insured and
 13 insurer. If the direct risk is assumed by more than one insurer,
 14 the document shall state the name and address and proportion of
 15 the entire direct risk assumed by each insurer.

16 No surplus lines agent shall issue any such document, or purport
 17 to insure or represent that insurance will be or has been granted by
 18 any unauthorized insurer unless he has written authority from the
 19 insurer for the insurance, or has received **[information]** *confirma-*
 20 *tion* from the insurer in the regular course of business that such in-
 21 surance has been granted, or an insurance policy or *certificate of*
 22 *insurance* ****[as provided in subsection b. of this section]**** pro-
 23 viding the insurance actually has been issued by the insurer and
 24 delivered to the insured.

25 If after the issuance and delivery of any such document there is
 26 any change as to the identity of the insurers, or the proportion of
 27 the direct risk assumed by the insurer as stated in the original
 28 certificate of *insurance*, cover note or confirmation of *insurance*, or
 29 in any other material respect as to the insurance coverage evidenced
 30 by such a document, the surplus lines agent shall promptly issue
 31 and deliver to the insured a substitute certificate of *insurance*, cover
 32 note or confirmation, or endorsement for the original of such docu-
 33 ment, accurately showing the current status of the coverage and
 34 the insurers responsible thereunder. No such change shall result
 35 in a coverage or insurance contract which would be in violation
 36 of this surplus lines law if originally issued on such basis.

37 If a policy issued by the insurer is not available upon placement
 38 of the insurance and the surplus lines agent has issued and delivered
 39 a certificate of *insurance* ****[,]**** ****on behalf of other than an alien**
 40 *insurer, or a* ****** cover note or confirmation, as hereinabove provided,
 41 the surplus lines agent shall as soon as reasonably possible, and
 42 in no event later than ***[60]* *90*** days after placement of such in-
 43 surance, procure from the insurer its policy ****[or certificate of**
 44 *insurance]* ****** ***[as provided in subsection b. of this section]***
 45 evidencing the insurance and deliver the policy to the insured in re-
 46 placement of the certificate of *insurance*, cover note, or confirmation
 46A theretofore issued.

47 ***[b.** *If the insurance is placed with an alien insurer or if insurance*
 48 *is issued in excess of the insurance and the alien insurer does not*
 49 *make a policy available within 90 days after the placement of cov-*
 50 *erage, the certificate of insurance, issued and delivered by the sur-*
 51 *plus lines agent as required by this section is sufficient confirmation*
 52 *of insurance. If the surplus lines agent issues a cover note as con-*
 53 *firmation of insurance, he shall as soon as reasonably possible, and*
 54 *not later than 90 days after placement of the insurance, issue and*
 55 *deliver to the insured a certificate of insurance. If insurance in*
 56 *excess of the coverage provided by an alien insurer is issued by a*
 57 *domestic or foreign insurer, a certificate of insurance issued by*
 58 *the domestic or foreign insurer shall be sufficient confirmation of*
 59 *insurance until a policy is issued by the alien insurer.]**

60 ***[c.]** * Any surplus lines agent who issues a false certificate, cover
 61 note, *binder* or confirmation of insurance or false endorsement
 62 therefor, or who fails to notify the insured promptly of any ma-
 63 terial change with respect to such insurance and deliver as soon
 64 as reasonably possible to the insured a substitute certificate of in-
 65 surance, cover note or confirmation, or endorsement as provided
 66 in paragraph 3 **[shall be guilty of a misdemeanor]** *commits a crime*
 67 *of the fourth degree.*

1 5. (New section) Every certificate of insurance shall contain or
 2 have attached thereto a complete record of all policy insuring
 3 agreements, conditions, exclusions, clauses, endorsements or any
 4 other material facts that would regularly be included in a surplus
 5 lines policy.

1 ****[*6.** (New section) *If, at any time, any unauthorized insurer*
 2 *then on the list of eligible surplus lines insurers fails to provide*
 3 *reasonable information or statistical data requested by the com-*
 4 *missioner, or fails to cooperate in any investigation or other inquiry*
 5 *by the commissioner, it shall be removed from the eligible surplus*
 6 *lines insurers list if the commissioner so determines after a hearing*
 7 *that such cooperation has been withheld.]***

1 ****[*7.** (New section) *The commissioner may, wherever he deems it*
 2 *expedient, make or cause to be made, an examination of the assets*
 3 *and liabilities, method of conducting business and all other affairs*
 4 *of any insurance company declared an approved eligible surplus*
 5 *lines insurer transacting surplus lines business in this State. For*
 6 *the purpose of examination, the commissioner may authorize and*
 7 *employ such person or persons to conduct the same or to assist*
 8 *therein as he deems advisable.*

9 *The examination may be conducted in any state or county in*
 10 *which the company examined is incorporated or has an office, agent,*
 11 *or place of business. The reasonable expenses of the examination*
 12 *shall be fixed and determined by the commissioner and he shall*
 13 *collect them from the company examined, which shall pay them on*
 14 *presentation of a detailed account of the expenses. Failure to pay*
 15 *a presented bill of examination may result in the withdrawal of*
 16 *the company's eligibility to write surplus lines in this state. Action*
 17 *taken by the commissioner shall be in accordance with section 12 of*
 18 *P. L. 1960, c. 32.*

19 *If any company, after the examination, is adjudged insolvent by*
 20 *the Superior Court, the expense of the examination, if unpaid, shall*
 21 *be ordered paid out of the assets of the company.*

22 *No insurance company shall, either directly or indirectly pay*
 23 *by way of a gift, credit or otherwise any other or further sum to the*
 24 *commissioner or to any person in the employ of the department,*
 25 *for extra service or for purposes of legislation, or for any other*
 26 *purposes.】***

1 **[8. (New section) *All documents other than those required*
 2 *under provisions of section 13 of P. L. 1960, c. 32 or any endorse-*
 3 *ments showing additional or return premiums need not be submitted*
 4 *to the Department of Insurance, except that such documents shall be*
 5 *retained in the office of the licensed surplus lines agent for a period*
 6 *of 3 years after the expiration of the policy. Such documents shall*
 7 *be subject to the examination of the commissioner.】***

1 **[9.]** **6.** (New section) *There is hereby appropriated*
 2 *\$30,000.00 to the Department of Insurance to effectuate the pur-*
 3 *poses of this act.**

1 *[6.]* **[*10.*]** **7.** This act shall take effect immediately.

ASSEMBLY, No. 1951

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen BORNHEIMER and DEVERIN

Referred to Committee on Banking and Insurance

AN ACT concerning surplus lines insurance, and amending and
supplementing 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 7 of P. L. 1960, c. 32 (C. 17:22-6.41) is amended to
2 read as follows:

3 7. As used in this surplus lines law:

4 (a) "Surplus lines agent" means an individual licensed as
5 provided in this chapter to handle the placement of insurance cov-
6 erages on behalf of unauthorized insurers.

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

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

13 (d) "Commissioner" means the Commissioner of **[Banking and]**
14 **Insurance of the State of New Jersey.**

15 (e) "*Certificate of insurance*" means permanent evidence of in-
16 *surance issued by a surplus lines agent who has filed evidence of*
17 *his binding authority with the commissioner on behalf of an alien*
18 *insurer. When issued other than on behalf of an alien insurer, the*
19 *certificate of insurance will be treated as temporary evidence of*
20 *insurance, pending the issuance of a policy.*

21 (f) "*Cover note, "binder" or "confirmation of insurance,"* means
22 *temporary evidence of insurance, to be replaced by a policy or cer-*
23 *tificate of insurance.*

1 2. Section 8 of P. L. 1960, c. 32 (C. 17:22-6.42) is amended to
2 read as follows:

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

3 8. If certain insurance coverages of subjects resident, located,
4 or to be performed in this State cannot be procured from autho-
5 rized insurers, such coverages, hereinafter designated "surplus
6 lines," may be procured from unauthorized insurers, subject to the
7 following conditions;

8 (a) The insurance must be eligible for export under section 9
9 of this act;

10 (b) The insurer must be an eligible surplus lines insurer under
11 section 11 of this act;

12 (c) The insurance must be so placed through a licensed New
13 Jersey surplus lines agent whose office and records are maintained
14 in New Jersey; and

15 (d) Other applicable provisions of this surplus lines law must
16 be complied with.

17 (e) *No surplus lines agent shall exercise binding authority in
18 this State on behalf of any insurer unless the agent has first filed
19 with the commissioner a copy of the written agreement between
20 the agent and the insurer setting forth the terms, conditions and
21 limitations governing the exercise of the binding authority by the
22 agent. A copy of any amendments to the agreement and of any
23 notice of cancellation or termination of the agreement shall be filed
24 by the agent with the commissioner no later than 30 days after
25 adoption thereof.*

26 *The agreement filed pursuant to this section shall be considered
27 and treated as a confidential document, and shall not be available
28 for inspection by the public.*

29 *The agreement shall include the following items:*

30 (1) *A description of the classes of insurance for which the agent
31 holds binding authority;*

32 (2) *The geographical limits upon the exercise of binding au-
33 thority by the agent;*

34 (3) *The maximum dollar limitation on the binding authority of
35 the agent for any one risk for each class of insurance written by
36 the agent;*

37 (4) *The maximum policy period for which the agent may bind
38 a risk;*

39 (5) *If the binding authority is delegable by the agent, a prohibi-
40 tion against the delegation without the prior written approval of
41 the insurer;*

42 (6) *A provision in the following or substantially comparable
43 language:*

44 *"It is understood and agreed that all insurance placed pur-*
 45 *suant to this agreement on subjects of insurance resident,*
 46 *located or to be performed in the State of New Jersey, shall be*
 47 *effected and written in accordance with the 'surplus lines law'."*

48 *If an agent who is qualified in accordance with this section to*
 49 *exercise binding authority on behalf of an insurer delegates the*
 50 *binding authority to any other agent, the agent to whom the au-*
 51 *thority is delegated shall not exercise the same until a copy of the*
 52 *instrument delegating the binding authority shall first have been*
 53 *filed with the commissioner. The instrument delegating the binding*
 54 *authority shall include an identification of the binding authority*
 55 *agreement between the delegating agent and the insurer.*

1 3. Section 13 of P. L. 1960, c. 32 (C. 17:22-6.47) is amended to
 2 read as follows:

3 13. Within **[21]** 30 days after the effectuation of any surplus
 4 lines insurance the surplus lines agents shall file with the commis-
 5 sioner:

6 (a) A copy of the **[binder,]** cover note, certificate, policy or
 7 other confirmation of insurance showing the identity and location
 8 of the subject of the proposed insurance; name and address of the
 9 proposed insured; name of proposed insurer or insurers; perils to
 10 be covered; form or type of policy or contract under which to be
 11 insured; any special or additional coverages or conditions; amount
 12 of premium or rate, and such other pertinent information as the
 13 commissioner may reasonably require; and

14 (b) The affidavits of the broker and the surplus lines agent, on
 15 forms as prescribed and furnished by the commissioner, as to
 16 efforts made to place the coverage with authorized insurers and
 17 the results thereof, except that no such affidavit shall be required
 18 for those coverages, risks or classes of insurance declared eligible
 19 for export by the commissioner pursuant to section 9 of this act.

20 (c) *The affidavit of the broker in a surplus lines insurance trans-*
 21 *action shall be filed with the surplus lines agent within 10 days of*
 22 *the effectuation of any surplus lines insurance placement. A broker*
 23 *who fails to file the affidavit within the prescribed time is subject*
 24 *to the penalties provided under section 27 of P. L. 1960, c. 32*
 25 *(C. 17:22-6.61).*

1 4. Section 16 of P. L. 1960, c. 32 (C. 17:22-6.50) is amended to
 2 read as follows:

3 16. a. Upon placing a surplus line coverage, the surplus lines
 4 agent shall promptly issue and deliver to the insured evidence of
 5 the insurance consisting either of the policy as issued by the in-

6 surer or, if such policy is not then available, a certificate of insur-
7 ance, cover note, or other confirmation of insurance, as provided
8 in this act. Such document shall be executed or countersigned by
9 the surplus lines agent and shall show the description and location
10 of the subject of the insurance, coverage, conditions and term of
11 the insurance, the premium and rate charged and taxes collected
12 from the insured, and the name and address of the insured and
13 insurer. If the direct risk is assumed by more than one insurer,
14 the document shall state the name and address and proportion of
15 the entire direct risk assumed by each insurer.

16 No surplus lines agent shall issue any such document, or purport
17 to insure or represent that insurance will be or has been granted by
18 any unauthorized insurer unless he has written authority from the
19 insurer for the insurance, or has received [information] confirma-
20 tion from the insurer in the regular course of business that such in-
21 surance has been granted, or an insurance policy or certificate of
22 insurance as provided in subsection b. of this section providing the
23 insurance actually has been issued by the insurer and delivered to
24 the insured.

25 If after the issuance and delivery of any such document there is
26 any change as to the identity of the insurers, or the proportion of
27 the direct risk assumed by the insurer as stated in the original
28 certificate of insurance, cover note or confirmation of insurance, or
29 in any other material respect as to the insurance coverage evidenced
30 by such a document, the surplus lines agent shall promptly issue
31 and deliver to the insured a substitute certificate of insurance, cover
32 note or confirmation, or endorsement for the original of such docu-
33 ment, accurately showing the current status of the coverage and
34 the insurers responsible thereunder. No such change shall result
35 in a coverage or insurance contract which would be in violation
36 of this surplus lines law if originally issued on such basis.

37 If a policy issued by the insurer is not available upon placement
38 of the insurance and the surplus lines agent has issued and delivered
39 a certificate of insurance, cover note or confirmation, as hereinabove
40 provided, the surplus lines agent shall as soon as reasonably possi-
41 ble, and in no event later than 60 days after placement of such
42 insurance, procure from the insurer its policy or certificate of in-
43 surance as provided in subsection b. of this section evidencing the
44 insurance and deliver the policy to the insured in replacement of
45 the certificate of insurance, cover note, or confirmation theretofore
46 issued.

47 *b. If the insurance is placed with an alien insurer or if insurance*
48 *is issued in excess of the insurance and the alien insurer does not*
49 *make a policy available within 90 days after the placement of cov-*
50 *erage, the certificate of insurance, issued and delivered by the sur-*
51 *plus lines agent as required by this section is sufficient confirmation*
52 *of insurance. If the surplus lines agent issues a cover note as con-*
53 *firmation of insurance, he shall as soon as reasonably possible, and*
54 *not later than 90 days after placement of the insurance, issue and*
55 *deliver to the insured a certificate of insurance. If insurance in*
56 *excess of the coverage provided by an alien insurer is issued by a*
57 *domestic or foreign insurer, a certificate of insurance issued by*
58 *the domestic or foreign insurer shall be sufficient confirmation of*
59 *insurance until a policy is issued by the alien insurer.*

60 *c. Any surplus lines agent who issues a false certificate, cover*
61 *note, binder or confirmation of insurance or false endorsement*
62 *therefor, or who fails to notify the insured promptly of any ma-*
63 *terial change with respect to such insurance and deliver as soon*
64 *as reasonably possible to the insured a substitute certificate of in-*
65 *surance, cover note or confirmation, or endorsement as provided*
66 *in paragraph 3 [shall be guilty of a misdemeanor] commits a crime*
67 *of the fourth degree.*

1 5. (New section) Every certificate of insurance shall contain or
2 have attached thereto a complete record of all policy insuring
3 agreements, conditions, exclusions, clauses, endorsements or any
4 other material facts that would regularly be included in a surplus
5 lines policy.

1 6. This act shall take effect immediately.

STATEMENT

This bill amends the surplus lines law to clarify the requirements of that law with respect to binding risks and issuing evidence of coverage.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1951

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 24, 1980

This legislation modifies the law governing surplus lines insurance, which is insurance written by non-licensed carriers, often on high risks or on special risks for which insurance cannot be obtained in normal market channels. The bill provides for the modification of certain procedures now used by the department to regulate this line of insurance, and gives the Commissioner of Insurance augmented authority with respect to the examination of these insurers.

The legislation amends P. L. 1960, c. 32 (the Surplus Lines Law). It provides for the issuance of a "certificate of insurance," which would be used in lieu of a normal policy of insurance if it is issued by a surplus lines agent who has binding authority on behalf of an alien insurer. In cases of surplus lines insurers other than alien insurers, the certificate of insurance is to be treated as temporary evidence of insurance, pending the issuance of a policy. The bill defines "cover note," "binder," and "confirmation of insurance" as temporary evidence of insurance, which would ultimately be replaced by a regular insurance policy.

Surplus lines agents would not be permitted to exercise binding authority on behalf of any insurer until the agent has filed a copy of the written agreement between himself and the insurer with the Commissioner of Insurance. Copies of any amendments or modifications to the agreement would be required to be filed with the commissioner no later than 5 days after they are effective. The agreement filed with the commissioner would be required to include a description of the lines of insurance for which the agent may exercise binding authority, the geographical limits of such authority, the maximum dollar limitation on the binding authority, the maximum period for which the agent may bind a risk, and a prohibition against the delegation of binding authority without the prior written approval of the insurer. If delegation of binding authority is to occur, a notice of such delegation would be required to be filed with the commissioner.

The legislation also provides that a copy of the binder, certificate of insurance, or other confirmation of insurance would be required to be filed within 30 business days of issuance, rather than 21. Affidavits of

brokers in surplus lines transactions would be required to be filed with the surplus lines agent within 10 days of the placement of the insurance.

The Assembly Banking and Insurance Committee has amended the bill to permit the Commissioner of Insurance to remove any surplus lines insurer from the list of eligible insurers if the insurer fails to provide reasonable information or statistical data requested by the commissioner. The committee amendments also give authority to the commissioner to conduct financial examinations of any surplus lines insurer doing business in the State. Insurers who are examined by the department would be required to pay for the cost of the examination. This amendatory material was added by the committee in view of the fact that the commissioner at present has little or no authority to examine the affairs of surplus lines insurer or to request that rating information or other information be submitted to the department, although he does possess such authority in the case of admitted insurers.

The Banking and Insurance Committee has also amended the bill to reduce the amount of information which is now required to be submitted to the department. Records which show endorsements or addenda to surplus lines policies would be required to be retained by the agent for a period of three years, and would be subject to the examination of the commissioner. The committee has also added a \$30,000.00 appropriation.

The committee amendments delete the provision that if the surplus lines insurance is placed with an alien insurer and the alien insurer does not make a policy available within 90 days after the placement of the coverage, the certificate of insurance will be deemed to be sufficient confirmation of insurance, and that cover notes issued as confirmations of insurance would be required to be replaced within 90 days by a certificate of insurance in the absence of a policy. This language was determined to be redundant in view of other provisions of the bill.

A major portion of these amendments to the surplus lines law are occasioned by the inability of some alien insurers, most notably Lloyd's of London, to issue insurance policies within the sixty day period required by law. Over the course of time since the surplus lines law was passed in 1960 the volume of insurance has increased significantly; the premium volume in 1960, for example, was about \$3 million, while at present it is close to \$105 million. Because of the volume, alien insurers have found it difficult to issue policies within the required time period. Surplus lines policies are not standardized policies, but rather risks which are individually written. Often, if surplus lines agents have binding authority for the companies which they represent, the insurer does not issue any document beyond a cover note or binder, with the result that the conditions of the coverage or exclusions are not known.

At present, the law is written in such a manner as to make the agent, not the company, responsible for the failure to issue a policy. This would alleviate any liability for a fine by accommodating the requirements of the law to the method actually used by alien insurers in issuing surplus lines policies. This legislation provides that agents representing alien insurers may issue certificates of insurance which have the characteristics of a policy in lieu of the actual policy.

The committee amendments also increase the commissioner's power to regulate and examine this line of insurance. Traditionally, the control of the State over surplus lines insurers has been minimal; the increased premium volume which has occurred in recent years has necessitated augmenting the power of the commissioner to protect insureds who must purchase this kind of insurance because of their failure to secure insurance elsewhere.

ASSEMBLY COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 1951

STATE OF NEW JERSEY

ADOPTED NOVEMBER 24, 1980

Amend page 1, title, line 1, after "insurance," omit "and".

Amend page 1, title, line 2, after "32", insert ", and making an appropriation therefor".

Amend page 1, section 1, line 16, after "surance", insert "on a form approved by the commissioner and".

Amend page 2, section 2, line 19, omit "a copy of", insert "and the commissioner has approved".

Amend page 2, section 2, line 24, omit "30", insert "5".

Amend pages 2-3, section 2, lines 42-47, omit in entirety.

Amend page 3, section 2, line 53, after "with", insert "and approved by".

Amend page 3, section 3, line 3, after "30", insert "business".

Amend page 3, section 4, line 3, omit "a."

Amend page 4, section 4, line 41, omit "60", insert "90".

Amend page 4, section 4, line 43, omit "as provided in subsection b. of this section".

Amend page 5, section 4, lines 47-59, omit in entirety.

Amend page 5, section 4, line 60, omit "c."

Amend page 5, section 5, after line 5, insert new sections as follows:

"6. (New section) If, at any time, any unauthorized insurer then on the list of eligible surplus lines insurers fails to provide reasonable information or statistical data requested by the commissioner, or fails to cooperate in any investigation or other inquiry by the commissioner, it shall be removed from the eligible surplus lines insurers list if the commissioner so determines after a hearing that such cooperation has been withheld.

7. (New section) The commissioner may, wherever he deems it expedient, make or cause to be made, an examination of the assets and liabilities, method of conducting business and all other affairs of any insurance company declared an approved eligible surplus lines insurer transacting surplus lines business in this State. For the purpose of examination, the commissioner may authorize and employ such person or persons to conduct the same or to assist therein as he deems advisable.

The examination may be conducted in any state or county in which the company examined is incorporated or has an office, agent, or place of

business. The reasonable expenses of the examination shall be fixed and determined by the commissioner and he shall collect them from the company examined, which shall pay them in presentation of a detailed account of the expenses. Failure to pay a presented bill of examination may result in the withdrawal of the company's eligibility to write surplus lines in this state. Action taken by the commissioner shall be in accordance with section 12 of P. L. 1960, c. 32.

If any company, after the examination, is adjudged insolvent by the Superior Court, the expense of the examination, if unpaid, shall be ordered paid out of the assets of the company.

No insurance company shall, either directly or indirectly pay by way of a gift, credit or otherwise any other or further sum to the commissioner or to any person in the employ of the department, for extra service or for purposes of legislation, or for any other purpose.

8. (New section) All documents other than those required under provisions of section 13 of P. L. 1960, c. 32 or any endorsements showing additional or return premiums need not be submitted to the Department of Insurance, except that such documents shall be retained in the office of the licensed surplus lines agent for a period of 3 years after the expiration of the policy. Such documents shall be subject to the examination of the commissioner.

9. (New section) There is hereby appropriated \$30,000.00 to the Department of Insurance to effectuate the purposes of this act.”.

Amend page 5, section 6, line 1, omit “6”, insert “10”.

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1951

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen BORNHEIMER and DEVERIN

Referred to Committee on Banking and Insurance

AN ACT concerning surplus lines insurance, ***[and]*** amending and supplementing P. L. 1960, c. 32*, and making an appropriation therefor*.

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

1 1. Section 7 of P. L. 1960, c. 32 (C. 17:22-6.41) is amended to
2 read as follows:

3 7. As used in this surplus lines law:

4 (a) "Surplus lines agent" means an individual licensed as
5 provided in this chapter to handle the placement of insurance cov-
6 erages on behalf of unauthorized insurers.

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

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

13 (d) "Commissioner" means the Commissioner of **[Banking and]**
14 **Insurance of the State of New Jersey.**

15 (e) "*Certificate of insurance*" means *permanent evidence of in-*
16 *surance *on a form approved by the commissioner and* issued by*
17 *a surplus lines agent who has filed evidence of his binding authority*
18 *with the commissioner on behalf of an alien insurer. When issued*
19 *other than on behalf of an alien insurer, the certificate of insurance*
20 *will be treated as temporary evidence of insurance, pending the*
20A *issuance of a policy.*

21 (f) "*Cover note,*" "*binder*" or "*confirmation of insurance,*" means
22 *temporary evidence of insurance, to be replaced by a policy or cer-*
23 *tificate of insurance.*

1 2. Section 8 of P. L. 1960, c. 32 (C. 17:22-6.42) is amended to
2 read as follows:

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

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

8 (a) The insurance must be eligible for export under section 9
9 of this act;

10 (b) The insurer must be an eligible surplus lines insurer under
11 section 11 of this act;

12 (c) The insurance must be so placed through a licensed New
13 Jersey surplus lines agent whose office and records are maintained
14 in New Jersey; and

15 (d) Other applicable provisions of this surplus lines law must
16 be complied with.

17 (e) *No surplus lines agent shall exercise binding authority in*
18 *this State on behalf of any insurer unless the agent has first filed*
19 *with the commissioner ***[a copy of]*** and the commissioner has*
20 *approved* the written agreement between the agent and the insurer*
21 *setting forth the terms, conditions and limitations governing the*
22 *exercise of the binding authority by the agent. A copy of any*
23 *amendments to the agreement and of any notice of cancellation or*
24 *termination of the agreement shall be filed by the agent with the*
25 *commissioner no later than ***[30]*** *5* days after adoption thereof.*

26 *The agreement filed pursuant to this section shall be considered*
27 *and treated as a confidential document, and shall not be available*
28 *for inspection by the public.*

29 *The agreement shall include the following items:*

30 (1) *A description of the classes of insurance for which the agent*
31 *holds binding authority;*

32 (2) *The geographical limits upon the exercise of binding au-*
33 *thority by the agent;*

34 (3) *The maximum dollar limitation on the binding authority of*
35 *the agent for any one risk for each class of insurance written by*
36 *the agent;*

37 (4) *The maximum policy period for which the agent may bind*
38 *a risk;*

39 (5) *If the binding authority is delegable by the agent, a prohibi-*
40 *tion against the delegation without the prior written approval of*
41 *the insurer;*

42 ***[(6)** *A provision in the following or substantially comparable*
43 *language:*

44 *"It is understood and agreed that all insurance placed pur-*
 45 *suant to this agreement on subjects of insurance resident,*
 46 *located or to be performed in the State of New Jersey, shall be*
 47 *effected and written in accordance with the 'surplus lines*
 47A *law'."*]*

48 *If an agent who is qualified in accordance with this section to*
 49 *exercise binding authority on behalf of an insurer delegates the*
 50 *binding authority to any other agent, the agent to whom the au-*
 51 *thority is delegated shall not exercise the same until a copy of the*
 52 *instrument delegating the binding authority shall first have been*
 53 *filed with *and approved by* the commissioner. The instrument*
 54 *delegating the binding authority shall include an identification of*
 55 *the binding authority agreement between the delegating agent and*
 55A *the insurer.*

1 3. Section 13 of P. L. 1960, c. 32 (C. 17:22-6.47) is amended to
 2 read as follows:

3 13. Within [21] 30 *business* days after the effectuation of any
 4 surplus lines insurance the surplus lines agents shall file with the
 5 commissioner:

6 (a) A copy of the [binder,] cover note, certificate, policy or
 7 other confirmation of insurance showing the identity and location
 8 of the subject of the proposed insurance; name and address of the
 9 proposed insured; name of proposed insurer or insurers; perils to
 10 be covered; form or type of policy or contract under which to be
 11 insured; any special or additional coverages or conditions; amount
 12 of premium or rate, and such other pertinent information as the
 13 commissioner may reasonably require; and

14 (b) The affidavits of the broker and the surplus lines agent, on
 15 forms as prescribed and furnished by the commissioner, as to
 16 efforts made to place the coverage with authorized insurers and
 17 the results thereof, except that no such affidavit shall be required
 18 for those coverages, risks or classes of insurance declared eligible
 19 for export by the commissioner pursuant to section 9 of this act.

20 (c) *The affidavit of the broker in a surplus lines insurance trans-*
 21 *action shall be filed with the surplus lines agent within 10 days of*
 22 *the effectuation of any surplus lines insurance placement. A broker*
 23 *who fails to file the affidavit within the prescribed time is subject*
 24 *to the penalties provided under section 27 of P. L. 1960, c. 32*
 25 *(C. 17:22-6.61).*

1 4. Section 16 of P. L. 1960, c. 32 (C. 17:22-6.50) is amended to
 2 read as follows:

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

16 No surplus lines agent shall issue any such document, or purport
17 to insure or represent that insurance will be or has been granted by
18 any unauthorized insurer unless he has written authority from the
19 insurer for the insurance, or has received **[information]** *confirma-*
20 *tion* from the insurer in the regular course of business that such in-
21 surance has been granted, or an insurance policy or *certificate of*
22 *insurance as provided in subsection b. of this section* providing the
23 insurance actually has been issued by the insurer and delivered to
24 the insured.

25 If after the issuance and delivery of any such document there is
26 any change as to the identity of the insurers, or the proportion of
27 the direct risk assumed by the insurer as stated in the original
28 certificate of *insurance*, cover note or confirmation of *insurance*, or
29 in any other material respect as to the insurance coverage evidenced
30 by such a document, the surplus lines agent shall promptly issue
31 and deliver to the insured a substitute certificate of *insurance*, cover
32 note or confirmation, or endorsement for the original of such docu-
33 ment, accurately showing the current status of the coverage and
34 the insurers responsible thereunder. No such change shall result
35 in a coverage or insurance contract which would be in violation
36 of this surplus lines law if originally issued on such basis.

37 If a policy issued by the insurer is not available upon placement
38 of the insurance and the surplus lines agent has issued and delivered
39 a certificate of *insurance*, cover note or confirmation, as hereinabove
40 provided, the surplus lines agent shall as soon as reasonably possi-
41 ble, and in no event later than ***[60]* *90*** days after placement of
42 such insurance, procure from the insurer its policy or *certificate of*
43 *insurance* ***[as provided in subsection b. of this section]*** evidenc-
44 ing the insurance and deliver the policy to the insured in replace-
45 ment of the certificate of *insurance*, cover note, or confirmation
46 theretofore issued.

47 ***[b.** *If the insurance is placed with an alien insurer or if insurance*
 48 *is issued in excess of the insurance and the alien insurer does not*
 49 *make a policy available within 90 days after the placement of cov-*
 50 *erage, the certificate of insurance, issued and delivered by the sur-*
 51 *plus lines agent as required by this section is sufficient confirmation*
 52 *of insurance. If the surplus lines agent issues a cover note as con-*
 53 *firmation of insurance, he shall as soon as reasonably possible, and*
 54 *not later than 90 days after placement of the insurance, issue and*
 55 *deliver to the insured a certificate of insurance. If insurance in*
 56 *excess of the coverage provided by an alien insurer is issued by a*
 57 *domestic or foreign insurer, a certificate of insurance issued by*
 58 *the domestic or foreign insurer shall be sufficient confirmation of*
 59 *insurance until a policy is issued by the alien insurer.]**

60 ***[c.]** * Any surplus lines agent who issues a false certificate, cover
 61 note, binder or confirmation of insurance or false endorsement
 62 therefor, or who fails to notify the insured promptly of any ma-
 63 terial change with respect to such insurance and deliver as soon
 64 as reasonably possible to the insured a substitute certificate of in-
 65 surance, cover note or confirmation, or endorsement as provided
 66 in paragraph 3 **[shall be guilty of a misdemeanor]** *commits a crime*
 67 *of the fourth degree.*

1 5. (New section) Every certificate of insurance shall contain or
 2 have attached thereto a complete record of all policy insuring
 3 agreements, conditions, exclusions, clauses, endorsements or any
 4 other material facts that would regularly be included in a surplus
 5 lines policy.

1 *6. (New section) *If, at any time, any unauthorized insurer then*
 2 *on the list of eligible surplus lines insurers fails to provide reason-*
 3 *able information or statistical data requested by the commissioner,*
 4 *or fails to cooperate in any investigation or other inquiry by the*
 5 *commissioner, it shall be removed from the eligible surplus lines*
 6 *insurers list if the commissioner so determines after a hearing*
 7 *that such cooperation has been withheld.*

1 7. (New section) *The commissioner may, wherever he deems it*
 2 *expedient, make or cause to be made, an examination of the assets*
 3 *and liabilities, method of conducting business and all other affairs*
 4 *of any insurance company declared an approved eligible surplus*
 5 *lines insurer transacting surplus lines business in this State. For*
 6 *the purpose of examination, the commissioner may authorize and*
 7 *employ such person or persons to conduct the same or to assist*
 8 *therein as he deems advisable.*

9 *The examination may be conducted in any state or county in*
10 *which the company examined is incorporated or has an office, agent,*
11 *or place of business. The reasonable expenses of the examination*
12 *shall be fixed and determined by the commissioner and he shall*
13 *collect them from the company examined, which shall pay them on*
14 *presentation of a detailed account of the expenses. Failure to pay*
15 *a presented bill of examination may result in the withdrawal of*
16 *the company's eligibility to write surplus lines in this state. Action*
17 *taken by the commissioner shall be in accordance with section 12 of*
18 *P. L. 1960, c. 32.*

19 *If any company, after the examination, is adjudged insolvent by*
20 *the Superior Court, the expense of the examination, if unpaid, shall*
21 *be ordered paid out of the assets of the company.*

22 *No insurance company shall, either directly or indirectly pay*
23 *by way of a gift, credit or otherwise any other or further sum to the*
24 *commissioner or to any person in the employ of the department,*
25 *for extra service or for purposes of legislation, or for any other*
26 *purposes.*

1 8. (New section) *All documents other than those required under*
2 *provisions of section 13 of P. L. 1960, c. 32 or any endorsements*
3 *showing additional or return premiums need not be submitted to*
4 *the Department of Insurance, except that such documents shall be*
5 *retained in the office of the licensed surplus lines agent for a period*
6 *of 3 years after the expiration of the policy. Such documents shall*
7 *be subject to the examination of the commissioner.*

1 9. (New section) *There is hereby appropriated \$30,000.00 to the*
2 *Department of Insurance to effectuate the purposes of this act.**

1 ***[6.]*** *10.* *This act shall take effect immediately.*

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1951

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 1981

This legislation modifies the law governing surplus lines insurance, which is insurance written by nonlicensed carriers, often on high risks or on special risks for which insurance cannot be obtained in normal market channels. The bill provides for the modification of certain procedures now used by the department to regulate this line of insurance, and gives the Commissioner of Insurance increased authority with respect to the examination of surplus lines insurers and agents.

The legislation amends P. L. 1960, c. 32 (the Surplus Lines Law). It provides for the issuance of a "certificate of insurance," which would be used in lieu of a normal policy of insurance if it is issued by a surplus lines agent who has binding authority on behalf of an alien insurer. In cases of surplus lines insurers other than alien insurers, the certificate of insurance is to be treated as temporary evidence of insurance, pending the issuance of a policy. The bill defines "cover note," "binder," and "confirmation of insurance" as temporary evidence of insurance, which would ultimately be replaced by a regular insurance policy.

Surplus lines agents would not be permitted to exercise binding authority on behalf of any insurer until the agent has filed a copy of the written agreement between himself and the insurer with the Commissioner of Insurance. Copies of any amendments or modifications to the agreement would be required to be filed with the commissioner no later than 5 days after they are effective. The agreement filed with the commissioner would be required to include a description of the lines of insurance for which the agent may exercise binding authority, the geographical limits of such authority, the maximum dollar limitation on the binding authority, the maximum period for which the agent may bind a risk, and a prohibition against the delegation of binding authority without the prior written approval of the insurer. If delegation of binding authority is to occur, a notice of such delegation would be required to be filed with the commissioner.

The legislation also provides that a copy of the binder, certificate of insurance, or other confirmation of insurance would be required to

be filed within 30 business days of issuance, rather than 21. Affidavits of brokers in surplus lines transactions would be required to be filed with the surplus lines agent within 10 days of the placement of the insurance.

The bill provides that if the policy is not available upon placement of the insurance, the temporary certificate of insurance issued in its stead would have to be replaced by a policy within 90 days in the case of a domestic insurer. In the case of an alien insurer, the certificate of insurance would be accepted as permanent evidence of insurance.

In addition to technical amendments, the Senate Labor, Industry and Professions Committee amended the bill to remove sections 6, 7, and 8. Section 6 would have empowered the Commissioner of Insurance to remove any surplus lines insurer from the list of eligible insurers if the insurer failed to provide reasonable information or statistical data requested by the commissioner. Section 7 permitted the commissioner to conduct financial examinations of any surplus lines insurer doing business in the State. Insurers who were examined by the department would have been required to pay for the cost of the examination. Section 8 would have required that records which show endorsements or addenda to surplus lines policies be retained by the agent for a period of 3 years, subject at all times to the examination of the commissioner.

The bill appropriates \$30,000.00 to the Department of Insurance.

SENATE COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 1951
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MARCH 23, 1981

Amend page 2, section 2, line 41, omit “;”, insert “.”.

Amend page 3, section 3, line 20, omit “(c)”.

Amend page 4, section 4, line 22, omit “as provided in subsection b. of this section”.

Amend page 4, section 4, line 39, after “insurance”, omit “,”, insert “on behalf of other than an alien insurer, or a”.

Amend page 4, section 4, lines 42 and 43, omit “or certificate of insurance”.

Amend page 5, section 6, lines 1-7, omit in entirety.

Amend pages 5 and 6, section 7, lines 1-26, omit in entirety.

Amend page 6, section 8, lines 1-7, omit in entirety.

Amend page 6, section 9, line 1, omit “9.”, insert “6.”.

Amend page 6, section 10, line 1, omit “10.”, insert “7.”.

[SENATE REPRINT]
ASSEMBLY, No. 1951
[OFFICIAL COPY REPRINT]

with Senate committee amendments adopted March 23, 1981

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen BORNHEIMER and DEVERIN

Referred to Committee on Banking and Insurance

AN ACT concerning surplus lines insurance, ***[and]*** amending and supplementing P. L. 1960, c. 32*, and making an appropriation therefor*.

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

1 1. Section 7 of P. L. 1960, c. 32 (C. 17:22-6.41) is amended to
2 read as follows:

3 7. As used in this surplus lines law:

4 (a) "Surplus lines agent" means an individual licensed as
5 provided in this chapter to handle the placement of insurance cov-
6 erages on behalf of unauthorized insurers.

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

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

13 (d) "Commissioner" means the Commissioner of **[Banking and]**
14 Insurance of the State of New Jersey.

15 (e) "Certificate of insurance" means permanent evidence of in-
16 surance *on a form approved by the commissioner and* issued by
17 a surplus lines agent who has filed evidence of his binding authority
18 with the commissioner on behalf of an alien insurer. When issued
19 other than on behalf of an alien insurer, the certificate of insurance
20 will be treated as temporary evidence of insurance, pending the
20A issuance of a policy.

21 (f) "Cover note," "binder" or "confirmation of insurance," means
22 temporary evidence of insurance, to be replaced by a policy or cer-
23 tificate of insurance.

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

1 2. Section 8 of P. L. 1960, c. 32 (C. 17:22-6.42) is amended to
2 read as follows:

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

8 (a) The insurance must be eligible for export under section 9
9 of this act;

10 (b) The insurer must be an eligible surplus lines insurer under
11 section 11 of this act;

12 (c) The insurance must be so placed through a licensed New
13 Jersey surplus lines agent whose office and records are maintained
14 in New Jersey; and

15 (d) Other applicable provisions of this surplus lines law must
16 be complied with.

17 (e) *No surplus lines agent shall exercise binding authority in
18 this State on behalf of any insurer unless the agent has first filed
19 with the commissioner ***[a copy of]*** *and the commissioner has
20 approved* the written agreement between the agent and the insurer
21 setting forth the terms, conditions and limitations governing the
22 exercise of the binding authority by the agent. A copy of any
23 amendments to the agreement and of any notice of cancellation or
24 termination of the agreement shall be filed by the agent with the
25 commissioner no later than ***[30]*** *5* days after adoption thereof.*

26 *The agreement filed pursuant to this section shall be considered
27 and treated as a confidential document, and shall not be available
28 for inspection by the public.*

29 *The agreement shall include the following items:*

30 (1) *A description of the classes of insurance for which the agent
31 holds binding authority;*

32 (2) *The geographical limits upon the exercise of binding au-
33 thority by the agent;*

34 (3) *The maximum dollar limitation on the binding authority of
35 the agent for any one risk for each class of insurance written by
36 the agent;*

37 (4) *The maximum policy period for which the agent may bind
38 a risk;*

39 (5) *If the binding authority is delegable by the agent, a prohibi-
40 tion against the delegation without the prior written approval of
41 the insurer****[;]**** **.**

42 ***[6]** *A provision in the following or substantially comparable
43 language:*

44 *"It is understood and agreed that all insurance placed pur-*
 45 *suant to this agreement on subjects of insurance resident,*
 46 *located or to be performed in the State of New Jersey, shall be*
 47 *effected and written in accordance with the 'surplus lines*
 47A *law'.']"*

48 *If an agent who is qualified in accordance with this section to*
 49 *exercise binding authority on behalf of an insurer delegates the*
 50 *binding authority to any other agent, the agent to whom the au-*
 51 *thority is delegated shall not exercise the same until a copy of the*
 52 *instrument delegating the binding authority shall first have been*
 53 *filed with *and approved by* the commissioner. The instrument*
 54 *delegating the binding authority shall include an identification of*
 55 *the binding authority agreement between the delegating agent and*
 55A *the insurer.*

1 3. Section 13 of P. L. 1960, c. 32 (C. 17:22-6.47) is amended to
 2 read as follows:

3 13. Within **[21]** 30 *business* days after the effectuation of any
 4 surplus lines insurance the surplus lines agents shall file with the
 5 commissioner:

6 (a) A copy of the **[binder,]** cover note, certificate, policy or
 7 other confirmation of insurance showing the identity and location
 8 of the subject of the proposed insurance: name and address of the
 9 proposed insured; name of proposed insurer or insurers; perils to
 10 be covered; form or type of policy or contract under which to be
 11 insured; any special or additional coverages or conditions; amount
 12 of premium or rate, and such other pertinent information as the
 13 commissioner may reasonably require; and

14 (b) The affidavits of the broker and the surplus lines agent, on
 15 forms as prescribed and furnished by the commissioner, as to
 16 efforts made to place the coverage with authorized insurers and
 17 the results thereof, except that no such affidavit shall be required
 18 for those coverages, risks or classes of insurance declared eligible
 19 for export by the commissioner pursuant to section 9 of this act.

20 ****[(c)]**** *The affidavit of the broker in a surplus lines insurance*
 21 *transaction shall be filed with the surplus lines agent within 10 days*
 22 *of the effectuation of any surplus lines insurance placement. A*
 23 *broker who fails to file the affidavit within the prescribed time is*
 24 *subject to the penalties provided under section 27 of P. L. 1960, c. 32*
 25 *(C. 17:22-6.61).*

1 4. Section 16 of P. L. 1960, c. 32 (C. 17:22-6.50) is amended to
 2 read as follows:

3 16. ***[a.]*** Upon placing a surplus line coverage, the surplus lines
 4 agent shall promptly issue and deliver to the insured evidence of

5 the insurance consisting either of the policy as issued by the in-
6 surer or, if such policy is not then available, a certificate of *insur-*
7 *ance*, cover note, or other confirmation of insurance, *as provided*
8 *in this act*. Such document shall be executed or countersigned by
9 the surplus lines agent and shall show the description and location
10 of the subject of the insurance, coverage, conditions and term of
11 the insurance, the premium and rate charged and taxes collected
12 from the insured, and the name and address of the insured and
13 insurer. If the direct risk is assumed by more than one insurer,
14 the document shall state the name and address and proportion of
15 the entire direct risk assumed by each insurer.

16 No surplus lines agent shall issue any such document, or purport
17 to insure or represent that insurance will be or has been granted by
18 any unauthorized insurer unless he has written authority from the
19 insurer for the insurance, or has received [information] *confirma-*
20 *tion* from the insurer in the regular course of business that such in-
21 surance has been granted, or an insurance policy or *certificate of*
22 *insurance* **[as provided in subsection b. of this section]** pro-
23 viding the insurance actually has been issued by the insurer and
24 delivered to the insured.

25 If after the issuance and delivery of any such document there is
26 any change as to the identity of the insurers, or the proportion of
27 the direct risk assumed by the insurer as stated in the original
28 certificate of *insurance*, cover note or confirmation of *insurance*, or
29 in any other material respect as to the insurance coverage evidenced
30 by such a document, the surplus lines agent shall promptly issue
31 and deliver to the insured a substitute certificate of *insurance*, cover
32 note or confirmation, or endorsement for the original of such docu-
33 ment, accurately showing the current status of the coverage and
34 the insurers responsible thereunder. No such change shall result
35 in a coverage or insurance contract which would be in violation
36 of this surplus lines law if originally issued on such basis.

37 If a policy issued by the insurer is not available upon placement
38 of the insurance and the surplus lines agent has issued and delivered
39 a certificate of *insurance***[.]** **on behalf of other than an alien
40 insurer, or a** cover note or confirmation, as hereinabove provided,
41 the surplus lines agent shall as soon as reasonably possible, and
42 in no event later than *[60]* *90* days after placement of such in-
43 surance, procure from the insurer its policy **[or certificate of
44 insurance]** * [as provided in subsection b. of this section]*
45 evidencing the insurance and deliver the policy to the insured in re-
46 placement of the certificate of *insurance*, cover note, or confirmation
46A theretofore issued.

47 ***[b.** *If the insurance is placed with an alien insurer or if insurance*
 48 *is issued in excess of the insurance and the alien insurer does not*
 49 *make a policy available within 90 days after the placement of cov-*
 50 *erage, the certificate of insurance, issued and delivered by the sur-*
 51 *plus lines agent as required by this section is sufficient confirmation*
 52 *of insurance. If the surplus lines agent issues a cover note as con-*
 53 *firmation of insurance, he shall as soon as reasonably possible, and*
 54 *not later than 90 days after placement of the insurance, issue and*
 55 *deliver to the insured a certificate of insurance. If insurance in*
 56 *excess of the coverage provided by an alien insurer is issued by a*
 57 *domestic or foreign insurer, a certificate of insurance issued by*
 58 *the domestic or foreign insurer shall be sufficient confirmation of*
 59 *insurance until a policy is issued by the alien insurer.]**

60 ***[c.]** *Any surplus lines agent who issues a false certificate, cover*
 61 *note, binder or confirmation of insurance or false endorsement*
 62 *therefor, or who fails to notify the insured promptly of any ma-*
 63 *terial change with respect to such insurance and deliver as soon*
 64 *as reasonably possible to the insured a substitute certificate of in-*
 65 *surance, cover note or confirmation, or endorsement as provided*
 66 *in paragraph 3 [shall be guilty of a misdemeanor] commits a crime*
 67 *of the fourth degree.*

1 5. (New section) Every certificate of insurance shall contain or
 2 have attached thereto a complete record of all policy insuring
 3 agreements, conditions, exclusions, clauses, endorsements or any
 4 other material facts that would regularly be included in a surplus
 5 lines policy.

1 ****[6.** (New section) *If, at any time, any unauthorized insurer*
 2 *then on the list of eligible surplus lines insurers fails to provide*
 3 *reasonable information or statistical data requested by the com-*
 4 *missioner, or fails to cooperate in any investigation or other inquiry*
 5 *by the commissioner, it shall be removed from the eligible surplus*
 6 *lines insurers list if the commissioner so determines after a hearing*
 7 *that such cooperation has been withheld.]***

1 ****[7.** (New section) *The commissioner may, wherever he deems it*
 2 *expedient, make or cause to be made, an examination of the assets*
 3 *and liabilities, method of conducting business and all other affairs*
 4 *of any insurance company declared an approved eligible surplus*
 5 *lines insurer transacting surplus lines business in this State. For*
 6 *the purpose of examination, the commissioner may authorize and*
 7 *employ such person or persons to conduct the same or to assist*
 8 *therein as he deems advisable.*

9 *The examination may be conducted in any state or county in*
 10 *which the company examined is incorporated or has an office, agent,*
 11 *or place of business. The reasonable expenses of the examination*
 12 *shall be fixed and determined by the commissioner and he shall*
 13 *collect them from the company examined, which shall pay them on*
 14 *presentation of a detailed account of the expenses. Failure to pay*
 15 *a presented bill of examination may result in the withdrawal of*
 16 *the company's eligibility to write surplus lines in this state. Action*
 17 *taken by the commissioner shall be in accordance with section 12 of*
 18 *P. L. 1960, c. 32.*

19 *If any company, after the examination, is adjudged insolvent by*
 20 *the Superior Court, the expense of the examination, if unpaid, shall*
 21 *be ordered paid out of the assets of the company.*

22 *No insurance company shall, either directly or indirectly pay*
 23 *by way of a gift, credit or otherwise any other or further sum to the*
 24 *commissioner or to any person in the employ of the department,*
 25 *for extra service or for purposes of legislation, or for any other*
 26 *purposes.】***

1 ***【8. (New section) All documents other than those required*
 2 *under provisions of section 13 of P. L. 1960, c. 32 or any endorse-*
 3 *ments showing additional or return premiums need not be submitted*
 4 *to the Department of Insurance, except that such documents shall be*
 5 *retained in the office of the licensed surplus lines agent for a period*
 6 *of 3 years after the expiration of the policy. Such documents shall*
 7 *be subject to the examination of the commissioner.】***

1 ***【9.】** **6.** (New section) There is hereby appropriated*
 2 *\$30,000.00 to the Department of Insurance to effectuate the pur-*
 3 *poses of this act.**

1 **【6.】* **【10.】** **7.** This act shall take effect immediately.*

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

AUGUST 6, 1981

DAVE DE MAIO

Governor Brendan Byrne today signed the following bills into law:

SJR-14, sponsored by Senator Matthew Feldman (D-Bergen), designates the Bergen County Regional Day School for the Handicapped as the Norman A. Bleshman School, in honor of the Bergen County activist for handicapped services.

Bleshman was unanimously selected for the honor by an ad hoc committee of the Bergen County Board of Special Services. The Committee's report, in part, read:

"...no single person...has voluntarily given so freely of his time, his energy, his ability and his heart over a long period of years as has Norman A. Bleshman to the cause of handicapped children."

A-1311, sponsored by Assemblyman Anthony M. Villane, Jr. (R-Monmouth), prohibits the unwarranted duplication of keys to property owned or leased by the State, and directs the Department of the Treasury to promulgate rules governing the use, distribution, manufacture, duplication and possession of those keys.

Governor Byrne conditionally vetoed the original version of this bill, which called for a confusing set of 19 rules for each of the 19 executive departments. The Legislature adopted his recommendation to place all jurisdiction for the rule-making under the Treasury Department.

A-1354, sponsored by Assemblyman Karl Weidel (R-Mercer), designates the "Safe Dam Act" which updates the State statutes concerning dams and reservoirs and requires inspections by the Department of Environmental Protection.

Governor Byrne conditionally vetoed the original bill because it contained a provision for legislative oversight of DEP rulings. The Legislature adopted the Governor's recommendation to drop the legislative oversight provision.

A-1951, sponsored by Assemblyman James W. Bornheimer (D-Middlesex), amends existing laws concerning "surplus lines insurance"-- insurance that, because of the nature of the risk, is generally not carried by insurance companies authorized to do business in New Jersey, but is offered through New Jersey-based agents by United States and foreign companies, the largest single supplier of surplus lines coverage, being Lloyds of London

- 1 2. THIS act shall take effect as to Column 1 on June 20, 1981 and
2 as to Column 2 on April 14, 1981.

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

The bill requires agents to submit surplus lines insurance agreements to the Department of Insurance for scrutiny regarding the type, duration of time, and cost of insurance.

In addition, inconsistencies in insurance methods are addressed. For example, currently surplus lines insurance law requires the issuance of a policy, but Lloyds, for one, issues only "certificates" of insurance in many cases. Under the bill, certificates of insurance would often be treated as permanent evidence of insurance.

A-2222, sponsored by Assemblyman George J. Otlowksi (D-Middlesex), which permits a city of the "second class" --- a population of 12,000 to 150,000 --- to sell land granted, dedicated or entrusted to the city when that land is of no practical use to the city.

The bill was introduced in response to a case involving the city of Perth Amboy, years ago granted property from the estate of a wealthy chemical manufacturer, but which now is unused, providing no tax revenue, and dilapidated due to lack of maintenance. Under the bill, cities in similar circumstances could apply to the courts to sell the land, placing it back on the tax rolls. Cities with populations under 12,000 --- of the third class --- already have this right.

#

- 1 2. This act shall take effect as to Column 1 on June 20, 1980 and
- 2 as to Column 2 on April 14, 1981.

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