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P.L. 2002, CHAPTER 30, *approved July 1, 2002*

Senate, No. 1717

1 **AN ACT** concerning surplus lines insurance and amending and
2 supplementing P.L.1984, c.101.

3

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

6

7 1. (New section) The Legislature finds and declares:

8 a. The "New Jersey Surplus Lines Insurance Guaranty Fund Act,"
9 P.L. 1984, c.101 (C.17:22-6.70 et seq.), enacted 18 years ago in the
10 face of an imminent threat of declaration of insolvency of Ambassador
11 Insurance Company of Vermont, has provided valuable benefits by
12 covering claims of certain claimants against insolvent property and
13 casualty insurers selling insurance in New Jersey as surplus lines.

14 b. That act was amended 15 years ago to include, as covered
15 claims, those claims arising from the declared insolvency of
16 Northeastern Fire Insurance Company of Pennsylvania.

17 c. Claims covered by the New Jersey Surplus Lines Insurance
18 Guaranty Fund included claims by New Jersey residents or claims
19 arising from property permanently located in New Jersey, in an amount
20 up to the lesser of the policy limit or \$300,000, subject to policy
21 deductibles, thereby redistributing some of the economic burden of
22 surplus lines insurer failures.

23 d. The New Jersey Surplus Lines Insurance Guaranty Fund
24 currently contains a balance of approximately \$80,000,000 and
25 \$40,000,000 is sufficient to satisfy existing covered claims.

26 e. The Legislature believes that, beyond the payment of existing
27 covered claims, it is good public policy to maintain surplus lines
28 insurance guaranty benefits for certain lines of insurance in the future.

29

30 2. Section 1 of P.L. 1984, c. 101 (C. 17:22-6.71) is amended to
31 read as follows:

32 1. The purpose of this act is to provide a mechanism for the
33 payment of covered claims under certain insurance policies issued by
34 eligible surplus lines insurers; to avoid excessive delays in the payment
35 of the covered claims against insolvent, eligible, nonadmitted insurers;
36 and to avoid financial loss to claimants or policyholders because of the
37 insolvency of an eligible, nonadmitted insurer.

38 **[This act]** On and after July 27, 1984 and before June 25, 2002,
39 P.L. 1984, c. 101 (C. 17:22-6.70 et seq.) shall apply to all property
40 and casualty lines of direct insurance authorized under R.S.17:17-1,

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

Matter underlined thus is new matter.

1 except workers' compensation insurance, title insurance, surety bonds,
2 credit insurance, mortgage guaranty insurance, municipal bond
3 coverage, fidelity insurance, investment return assurance, and ocean
4 marine insurance. This act shall also not apply to reinsurance of any
5 kind.

6 On or after June 25, 2002, P.L. 1984, c. 101 (C. 17:22-6.70 et seq.)
7 shall apply only to medical malpractice liability insurance as defined in
8 subsection d. of section 3 of P.L. 1975, c. 301 (C. 17:30D-3) and
9 property insurance covering owner occupied dwellings of less than
10 four dwelling units. On or after June 25, 2002, P.L. 1984, c. 101 (C.
11 17:22-6.70 et seq.) shall not apply to reinsurance of any kind.
12 (cf: P.L.1984, c.207, s. 1.)

13

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

16 3. a. "Association" means the New Jersey Property-Liability
17 Insurance Guaranty Association created pursuant to P.L.1974, c.17
18 (C.17:30A-1 et seq.).

19 b. "Covered claim" means an unpaid claim, including a claim for
20 unearned premiums, which arises out of and is within the coverage,
21 and not in excess of the applicable limits of an insurance policy to
22 which this act applies, and which was issued by a surplus lines insurer
23 which was eligible to transact insurance business in this State at the
24 time the policy was issued and which has been determined to be an
25 insolvent insurer on or after June 1, 1984, but prior to June 25, 2002,
26 if (1) the claimant or policyholder is a resident of this State at the time
27 of the occurrence of the insured event for which a claim has been
28 made, or (2) the property from which the claim arises is permanently
29 located in this State. A "covered claim" which arises because of an
30 insolvency occurring on or after June 25, 2002 shall be limited to an
31 unpaid claim, including a claim for unearned premiums, which arises
32 out of either medical malpractice liability insurance coverage or
33 property insurance covering owner occupied dwellings of less than
34 four dwelling units within the coverage, and not in excess of the
35 applicable limits, of an insurance policy to which P.L. 1984, c. 101 (C.
36 17:22-6.70 et seq.) applies, and which was issued by a surplus lines
37 insurer which was eligible to transact insurance business in this State
38 at the time the policy was issued and which has been determined to be
39 an insolvent insurer on or after June 25, 2002, if (1) the claimant or
40 policyholder is a resident of this State at the time of the occurrence of
41 the insured event for which a claim has been made, or (2) the property
42 from which the claim arises is permanently located in this State.

43 "Covered claim" shall not include any amount due any reinsurer,
44 insurance pool or underwriting association, as subrogation recoveries
45 or otherwise, except that a claim for any such amount, asserted against
46 a person insured under a policy issued by a surplus lines insurer which

1 has become an insolvent insurer, which, if it were not a claim by or for
2 the benefit of a reinsurer, insurer, insurance pool, or underwriting
3 association, would be a "covered claim," may be filed directly with the
4 receiver of the insolvent insurer, but in no event may any such claim
5 be asserted in any legal action against the insured of that insolvent
6 insurer. "Covered claim" shall also not include amounts for interest on
7 unliquidated claims, punitive damages unless covered by the policy,
8 counsel fees for prosecuting suits for claims against the fund, and
9 assessments or charges for failure by an insolvent insurer to have
10 expeditiously settled claims.

11 A "covered claim" shall not include a claim filed with the fund after
12 the final date set by the court for the filing of claims against the
13 liquidator or receiver of an insolvent insurer unless the claimant
14 demonstrates unusual hardship and the commissioner approves of
15 treatment of the claim as a "covered claim." "Unusual hardship" shall
16 be defined in regulations promulgated by the commissioner. With
17 respect to insurer insolvencies pending as of the effective date of this
18 1996 amendatory act, a "covered claim" shall not include a claim filed
19 with the fund: (1) more than one year after the effective date of this
20 1996 amendatory act or (2) the date set by the court for the filing of
21 claims against the liquidator or receiver of the insolvent insurer,
22 whichever date occurs later.

23 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty
24 Fund created pursuant to section 4 of this act.

25 d. "Insolvent insurer" means an insurer which was an eligible
26 surplus lines insurer at the time the insurance policy was issued or
27 when the insured event occurred, and which is determined to be
28 insolvent by a court of competent jurisdiction in this State or the state
29 or place in which the surplus lines insurer is domiciled. "Insolvent
30 insurer" does not include an admitted insurer issuing insurance
31 pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

32 e. "Member insurer" means an eligible, nonadmitted or surplus lines
33 insurer required to be a member of, and that is subject to, assessments
34 by the fund.

35 f. "Net direct written premiums" means direct gross premiums on
36 insurance policies written by a surplus lines insurer to which this act
37 applies, less return premiums thereon and dividends paid or credited
38 to policyholders on that direct business. If a policy issued by a surplus
39 lines insurer covers risks or exposures only partially in this State, the
40 "net direct written premiums" shall be computed, for assessment
41 purposes, on that portion of the premium subject to the premium
42 receipts tax levied in accordance with section 25 of P.L.1960, c.32
43 (C.17:22-6.59). "Net direct written premiums" do not include
44 premiums on contracts between insurers or reinsurers.

45 g. "Surplus lines insurer" means a nonadmitted insurer approved as
46 an eligible, nonadmitted or unauthorized insurer pursuant to section 11

1 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued
2 against which a covered claim may be filed in accordance with this act.
3 (cf: P.L.1996, c.156, s.3.)

4

5 4. Section 4 of P.L. 1984, c. 101 (C.17:22-6.73) is amended to
6 read as follows:

7 4. There is created a private, nonprofit, unincorporated, legal entity
8 to be known as the New Jersey Surplus Lines Insurance Guaranty
9 Fund. All surplus lines insurers shall be and remain member insurers
10 of the fund as a condition of their continued eligibility pursuant to
11 section 11 of P.L.1960, c.32 (C.17:22-6.45). The fund shall be
12 managed and administered by the New Jersey Property-Liability
13 Insurance Guaranty Association. The association shall exercise all of
14 the powers vested in the fund under this act, and such other powers as
15 may be necessary or appropriate to the fulfilling of its responsibilities
16 under this act. The association shall administer the affairs of the fund
17 in accordance with the "New Jersey Property-Liability Guaranty
18 Association Act," P.L.1974, c.17 (C.17:30A-1 et seq.) and its plan of
19 operation adopted pursuant to section 9 (C.17:30A-9), insofar as the
20 provisions of that act and that plan are not thereof inconsistent with
21 the provisions of this act, and subject to any amendments to the plan
22 as may be necessary or appropriate to effectuate the purposes of this
23 act. After the excess moneys in the fund are transferred to the General
24 Fund pursuant to section 5 of P.L.1984, c.101 (C.17:22-6.74), the
25 association shall be responsible for the run-off and wind-up of all
26 covered claims existing before June 25, 2002. On or after June 25,
27 2002, the operations and obligations of the fund pursuant to P.L.
28 1984, c. 101 (C. 17:22-6.70 et seq.), with respect to eligible surplus
29 lines insurers determined to be insolvent after that date, other than
30 eligible surplus lines insurers issuing policies for medical malpractice
31 liability insurance or property insurance covering owner occupied
32 dwellings of less than four dwelling units, shall be terminated. On or
33 after June 25, 2002, the fund shall only provide coverage for eligible
34 surplus lines insurers issuing medical malpractice liability insurance or
35 property insurance covering owner occupied dwellings of less than
36 four dwelling units determined to be insolvent after that date.

37 In order to assist the association in implementing the provisions of
38 this act, there is created an advisory body to the board of directors of
39 the association to be comprised of two members representing eligible
40 surplus lines insurers and two members representing surplus lines
41 agents, to be appointed by and to serve at the pleasure of the
42 commissioner. The association shall consult the advisory body on any
43 matter relating to the provisions of P.L.1984, c.101 (C.17:22-6.70 et
44 seq.).

45 (cf: P. L.1984, c.207, s.3.)

1 5. Section 5 of P.L. 1984, c. 101 (C.17:22-6.74) is amended to
2 read as follows:

3 5. a. The fund shall:

4 (1) Be obligated to the extent of the covered claims against an
5 insolvent insurer incurred prior to or 30 days after the determination
6 of insolvency, or before the policy expiration date, if less than 30 days
7 after that determination, or before the policyholder replaces the policy
8 or causes its cancellation, if he does so within 30 days of the
9 determination. The fund's obligation for covered claims shall not be
10 greater than \$300,000.00 per occurrence, subject to any applicable
11 deductible contained in the policy. The commissioner may adjust the
12 fund's obligations for covered claims based on the monies available in
13 the fund. In no event shall the fund be obligated to a policyholder or
14 claimant in excess of the limits of liability of the insolvent insurer
15 stated in the policy from which the claim arises;

16 (2) Be deemed the insurer to the extent of its obligation on the
17 covered claims and to such extent shall have all rights, duties, and
18 obligations of the insolvent insurer as if the insurer had not become
19 insolvent;

20 (3) Assess member insurers in accordance with section 6 of this act
21 in amounts necessary to pay:

22 (a) Obligations of the fund under paragraph (1) of this subsection,

23 (b) Expenses of handling covered claims,

24 (c) Any other expenses incurred in the implementation of the
25 provisions of this act;

26 (4) Investigate claims brought against the fund; and adjust,
27 compromise, settle, and pay covered claims to the extent of the fund's
28 obligation; and deny all other claims; and may review settlements,
29 releases and judgments to which the insolvent insurer or its
30 policyholders were parties to determine the extent to which the
31 settlements, releases and judgments may be properly contested;

32 (5) Notify those persons as the commissioner directs under section
33 8 of this act;

34 (6) Handle claims through the association's employees or
35 representatives, or through one or more insurers or other persons
36 designated as servicing facilities; [and]

37 (7) Pay the other expenses of the association in administering the
38 provisions of this act; and

39 (8) Within 60 days of enactment of P.L. , c. (C.)(now
40 before the Legislature as this bill), transfer to the General Fund any
41 and all moneys in excess of \$40,000,000 in the fund as of June 24,
42 2002.

43 b. The fund may:

44 (1) Sue or be sued;

45 (2) Negotiate and become a party to those contracts which are
46 necessary to carry out the purpose of this act;

1 (3) Perform those other acts which are necessary or appropriate to
2 effectuate the purpose of this act;

3 (4) [Refund to the member insurers in proportion to the
4 contribution of each member insurer that amount which the
5 commissioner determines to be in excess of the needs of the fund; and]
6 (Deleted by amendment, P.L. . . . , c. . .)

7 (5) With the approval of the commissioner, borrow monies from
8 any source, including but not limited to the New Jersey
9 Property-Liability Insurance Guaranty Association, in accordance with
10 subsection b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may
11 be necessary to effectuate the purposes of that act, except that the use
12 of the proceeds of any loans shall be limited to the payment of covered
13 claims, including claim adjustment expenses; and

14 (6) Make loans to the New Jersey Property-Liability Insurance
15 Guaranty Association in accordance with the provisions of the "New
16 Jersey Property-Liability Insurance Guaranty Association Act," P.L.
17 1974, c. 17 (C.17:30A-1 et seq.).
18 (cf: P.L.1984, c.207, s. 4.)

19
20 6. This act shall take effect immediately and be retroactive to June
21 24, 2002.

22
23
24 STATEMENT

25
26 This bill transfers to the General Fund any and all moneys in excess
27 of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty
28 Fund as of June 24, 2002. The \$40,000,000 remaining in the fund will
29 be sufficient to satisfy all existing covered claims. Following June 24,
30 2002, claims eligible for coverage under the fund will be limited to
31 medical malpractice liability insurance policies and policies for
32 property insurance covering owner occupied dwellings of less than
33 four dwelling units whose surplus lines insurer subsequently becomes
34 insolvent. The New Jersey Property-Liability Insurance Guaranty
35 Association would continue to operate and maintain the fund for this
36 purpose. Additionally, the bill authorizes the fund to make loans to
37 the New Jersey Property-Liability Insurance Guaranty Association.

38
39
40 _____
41
42 Transfers moneys in excess of \$40,000,000 from Surplus Lines
43 Insurance Guaranty Fund to General Fund; limits future purpose of
44 fund; authorizes fund to make loans to Property-Liability Insurance
45 Guaranty Association.

SENATE, No. 1717

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 27, 2002

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Assemblyman DONALD TUCKER

District 28 (Essex)

SYNOPSIS

Transfers moneys in excess of \$40,000,000 from Surplus Lines Insurance Guaranty Fund to General Fund; limits future purpose of fund; authorizes fund to make loans to Property-Liability Insurance Guaranty Association.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/1/2002)

S1717 BRYANT

2

1 AN ACT concerning surplus lines insurance and amending and
2 supplementing P.L.1984, c.101.

3

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

6

7 1. (New section) The Legislature finds and declares:

8 a. The "New Jersey Surplus Lines Insurance Guaranty Fund Act,"
9 P.L. 1984, c.101 (C.17:22-6.70 et seq.), enacted 18 years ago in the
10 face of an imminent threat of declaration of insolvency of Ambassador
11 Insurance Company of Vermont, has provided valuable benefits by
12 covering claims of certain claimants against insolvent property and
13 casualty insurers selling insurance in New Jersey as surplus lines.

14 b. That act was amended 15 years ago to include, as covered
15 claims, those claims arising from the declared insolvency of
16 Northeastern Fire Insurance Company of Pennsylvania.

17 c. Claims covered by the New Jersey Surplus Lines Insurance
18 Guaranty Fund included claims by New Jersey residents or claims
19 arising from property permanently located in New Jersey, in an amount
20 up to the lesser of the policy limit or \$300,000, subject to policy
21 deductibles, thereby redistributing some of the economic burden of
22 surplus lines insurer failures.

23 d. The New Jersey Surplus Lines Insurance Guaranty Fund
24 currently contains a balance of approximately \$80,000,000 and
25 \$40,000,000 is sufficient to satisfy existing covered claims.

26 e. The Legislature believes that, beyond the payment of existing
27 covered claims, it is good public policy to maintain surplus lines
28 insurance guaranty benefits for certain lines of insurance in the future.

29

30 2. Section 1 of P.L. 1984, c. 101 (C. 17:22-6.71) is amended to
31 read as follows:

32 1. The purpose of this act is to provide a mechanism for the
33 payment of covered claims under certain insurance policies issued by
34 eligible surplus lines insurers; to avoid excessive delays in the payment
35 of the covered claims against insolvent, eligible, nonadmitted insurers;
36 and to avoid financial loss to claimants or policyholders because of the
37 insolvency of an eligible, nonadmitted insurer.

38 **[This act]** On and after July 27, 1984 and before June 25, 2002,
39 P.L. 1984, c. 101 (C. 17:22-6.70 et seq.) shall apply to all property
40 and casualty lines of direct insurance authorized under R.S.17:17-1,
41 except workers' compensation insurance, title insurance, surety bonds,
42 credit insurance, mortgage guaranty insurance, municipal bond
43 coverage, fidelity insurance, investment return assurance, and ocean

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

Matter underlined thus is new matter.

1 marine insurance. This act shall also not apply to reinsurance of any
2 kind.

3 On or after June 25, 2002, P.L. 1984, c. 101 (C. 17:22-6.70 et seq.)
4 shall apply only to medical malpractice liability insurance as defined in
5 subsection d. of section 3 of P.L. 1975, c. 301 (C. 17:30D-3) and
6 property insurance covering owner occupied dwellings of less than
7 four dwelling units. On or after June 25, 2002, P.L. 1984, c. 101 (C.
8 17:22-6.70 et seq.) shall not apply to reinsurance of any kind.
9 (cf: P.L.1984, c.207, s. 1.)
10

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

13 3. a. "Association" means the New Jersey Property-Liability
14 Insurance Guaranty Association created pursuant to P.L.1974, c.17
15 (C.17:30A-1 et seq.).

16 b. "Covered claim" means an unpaid claim, including a claim for
17 unearned premiums, which arises out of and is within the coverage,
18 and not in excess of the applicable limits of an insurance policy to
19 which this act applies, and which was issued by a surplus lines insurer
20 which was eligible to transact insurance business in this State at the
21 time the policy was issued and which has been determined to be an
22 insolvent insurer on or after June 1, 1984, but prior to June 25, 2002,
23 if (1) the claimant or policyholder is a resident of this State at the time
24 of the occurrence of the insured event for which a claim has been
25 made, or (2) the property from which the claim arises is permanently
26 located in this State. A "covered claim" which arises because of an
27 insolvency occurring on or after June 25, 2002 shall be limited to an
28 unpaid claim, including a claim for unearned premiums, which arises
29 out of either medical malpractice liability insurance coverage or
30 property insurance covering owner occupied dwellings of less than
31 four dwelling units within the coverage, and not in excess of the
32 applicable limits, of an insurance policy to which P.L. 1984, c. 101 (C.
33 17:22-6.70 et seq.) applies, and which was issued by a surplus lines
34 insurer which was eligible to transact insurance business in this State
35 at the time the policy was issued and which has been determined to be
36 an insolvent insurer on or after June 25, 2002, if (1) the claimant or
37 policyholder is a resident of this State at the time of the occurrence of
38 the insured event for which a claim has been made, or (2) the property
39 from which the claim arises is permanently located in this State.

40 "Covered claim" shall not include any amount due any reinsurer,
41 insurance pool or underwriting association, as subrogation recoveries
42 or otherwise, except that a claim for any such amount, asserted against
43 a person insured under a policy issued by a surplus lines insurer which
44 has become an insolvent insurer, which, if it were not a claim by or for
45 the benefit of a reinsurer, insurer, insurance pool, or underwriting
46 association, would be a "covered claim," may be filed directly with the

1 receiver of the insolvent insurer, but in no event may any such claim
2 be asserted in any legal action against the insured of that insolvent
3 insurer. "Covered claim" shall also not include amounts for interest on
4 unliquidated claims, punitive damages unless covered by the policy,
5 counsel fees for prosecuting suits for claims against the fund, and
6 assessments or charges for failure by an insolvent insurer to have
7 expeditiously settled claims.

8 A "covered claim" shall not include a claim filed with the fund after
9 the final date set by the court for the filing of claims against the
10 liquidator or receiver of an insolvent insurer unless the claimant
11 demonstrates unusual hardship and the commissioner approves of
12 treatment of the claim as a "covered claim." "Unusual hardship" shall
13 be defined in regulations promulgated by the commissioner. With
14 respect to insurer insolvencies pending as of the effective date of this
15 1996 amendatory act, a "covered claim" shall not include a claim filed
16 with the fund: (1) more than one year after the effective date of this
17 1996 amendatory act or (2) the date set by the court for the filing of
18 claims against the liquidator or receiver of the insolvent insurer,
19 whichever date occurs later.

20 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty
21 Fund created pursuant to section 4 of this act.

22 d. "Insolvent insurer" means an insurer which was an eligible
23 surplus lines insurer at the time the insurance policy was issued or
24 when the insured event occurred, and which is determined to be
25 insolvent by a court of competent jurisdiction in this State or the state
26 or place in which the surplus lines insurer is domiciled. "Insolvent
27 insurer" does not include an admitted insurer issuing insurance
28 pursuant to section 10 of P.L.1960, c.32 (C.17:22-6.44).

29 e. "Member insurer" means an eligible, nonadmitted or surplus lines
30 insurer required to be a member of, and that is subject to, assessments
31 by the fund.

32 f. "Net direct written premiums" means direct gross premiums on
33 insurance policies written by a surplus lines insurer to which this act
34 applies, less return premiums thereon and dividends paid or credited
35 to policyholders on that direct business. If a policy issued by a surplus
36 lines insurer covers risks or exposures only partially in this State, the
37 "net direct written premiums" shall be computed, for assessment
38 purposes, on that portion of the premium subject to the premium
39 receipts tax levied in accordance with section 25 of P.L.1960, c.32
40 (C.17:22-6.59). "Net direct written premiums" do not include
41 premiums on contracts between insurers or reinsurers.

42 g. "Surplus lines insurer" means a nonadmitted insurer approved as
43 an eligible, nonadmitted or unauthorized insurer pursuant to section 11
44 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued
45 against which a covered claim may be filed in accordance with this act.
46 (cf: P.L.1996, c.156, s.3.)

1 4. Section 4 of P.L. 1984, c. 101 (C.17:22-6.73) is amended to
2 read as follows:

3 4. There is created a private, nonprofit, unincorporated, legal entity
4 to be known as the New Jersey Surplus Lines Insurance Guaranty
5 Fund. All surplus lines insurers shall be and remain member insurers
6 of the fund as a condition of their continued eligibility pursuant to
7 section 11 of P.L.1960, c.32 (C.17:22-6.45). The fund shall be
8 managed and administered by the New Jersey Property-Liability
9 Insurance Guaranty Association. The association shall exercise all of
10 the powers vested in the fund under this act, and such other powers as
11 may be necessary or appropriate to the fulfilling of its responsibilities
12 under this act. The association shall administer the affairs of the fund
13 in accordance with the "New Jersey Property-Liability Guaranty
14 Association Act," P.L.1974, c.17 (C.17:30A-1 et seq.) and its plan of
15 operation adopted pursuant to section 9 (C.17:30A-9), insofar as the
16 provisions of that act and that plan are not thereof inconsistent with
17 the provisions of this act, and subject to any amendments to the plan
18 as may be necessary or appropriate to effectuate the purposes of this
19 act. After the excess moneys in the fund are transferred to the General
20 Fund pursuant to section 5 of P.L.1984, c.101 (C.17:22-6.74), the
21 association shall be responsible for the run-off and wind-up of all
22 covered claims existing before June 25, 2002. On or after June 25,
23 2002, the operations and obligations of the fund pursuant to P.L.
24 1984, c. 101 (C. 17:22-6.70 et seq.), with respect to eligible surplus
25 lines insurers determined to be insolvent after that date, other than
26 eligible surplus lines insurers issuing policies for medical malpractice
27 liability insurance or property insurance covering owner occupied
28 dwellings of less than four dwelling units, shall be terminated. On or
29 after June 25, 2002, the fund shall only provide coverage for eligible
30 surplus lines insurers issuing medical malpractice liability insurance or
31 property insurance covering owner occupied dwellings of less than
32 four dwelling units determined to be insolvent after that date.

33 In order to assist the association in implementing the provisions of
34 this act, there is created an advisory body to the board of directors of
35 the association to be comprised of two members representing eligible
36 surplus lines insurers and two members representing surplus lines
37 agents, to be appointed by and to serve at the pleasure of the
38 commissioner. The association shall consult the advisory body on any
39 matter relating to the provisions of P.L.1984, c.101 (C.17:22-6.70 et
40 seq.).

41 (cf: P. L.1984, c.207, s.3.)

42

43 5. Section 5 of P.L. 1984, c. 101 (C.17:22-6.74) is amended to
44 read as follows:

45 5. a. The fund shall:

46 (1) Be obligated to the extent of the covered claims against an

1 insolvent insurer incurred prior to or 30 days after the determination
2 of insolvency, or before the policy expiration date, if less than 30 days
3 after that determination, or before the policyholder replaces the policy
4 or causes its cancellation, if he does so within 30 days of the
5 determination. The fund's obligation for covered claims shall not be
6 greater than \$300,000.00 per occurrence, subject to any applicable
7 deductible contained in the policy. The commissioner may adjust the
8 fund's obligations for covered claims based on the monies available in
9 the fund. In no event shall the fund be obligated to a policyholder or
10 claimant in excess of the limits of liability of the insolvent insurer
11 stated in the policy from which the claim arises;

12 (2) Be deemed the insurer to the extent of its obligation on the
13 covered claims and to such extent shall have all rights, duties, and
14 obligations of the insolvent insurer as if the insurer had not become
15 insolvent;

16 (3) Assess member insurers in accordance with section 6 of this act
17 in amounts necessary to pay:

18 (a) Obligations of the fund under paragraph (1) of this subsection,

19 (b) Expenses of handling covered claims,

20 (c) Any other expenses incurred in the implementation of the
21 provisions of this act;

22 (4) Investigate claims brought against the fund; and adjust,
23 compromise, settle, and pay covered claims to the extent of the fund's
24 obligation; and deny all other claims; and may review settlements,
25 releases and judgments to which the insolvent insurer or its
26 policyholders were parties to determine the extent to which the
27 settlements, releases and judgments may be properly contested;

28 (5) Notify those persons as the commissioner directs under section
29 8 of this act;

30 (6) Handle claims through the association's employees or
31 representatives, or through one or more insurers or other persons
32 designated as servicing facilities; [and]

33 (7) Pay the other expenses of the association in administering the
34 provisions of this act; and

35 (8) Within 60 days of enactment of P.L. , c. (C.)(now
36 before the Legislature as this bill), transfer to the General Fund any
37 and all moneys in excess of \$40,000,000 in the fund as of June 24,
38 2002.

39 b. The fund may:

40 (1) Sue or be sued;

41 (2) Negotiate and become a party to those contracts which are
42 necessary to carry out the purpose of this act;

43 (3) Perform those other acts which are necessary or appropriate to
44 effectuate the purpose of this act;

45 (4) [Refund to the member insurers in proportion to the
46 contribution of each member insurer that amount which the

1 commissioner determines to be in excess of the needs of the fund; and]
2 (Deleted by amendment, P.L. . . , c. . .)

3 (5) With the approval of the commissioner, borrow monies from
4 any source, including but not limited to the New Jersey
5 Property-Liability Insurance Guaranty Association, in accordance with
6 subsection b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may
7 be necessary to effectuate the purposes of that act, except that the use
8 of the proceeds of any loans shall be limited to the payment of covered
9 claims, including claim adjustment expenses; and

10 (6) Make loans to the New Jersey Property-Liability Insurance
11 Guaranty Association in accordance with the provisions of the "New
12 Jersey Property-Liability Insurance Guaranty Association Act," P.L.
13 1974, c. 17 (C.17:30A-1 et seq.).

14 (cf: P.L.1984, c.207, s. 4.)

15

16 6. This act shall take effect immediately and be retroactive to June
17 24, 2002.

18

19

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STATEMENT

21

22 This bill transfers to the General Fund any and all moneys in excess
23 of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty
24 Fund as of June 24, 2002. The \$40,000,000 remaining in the fund will
25 be sufficient to satisfy all existing covered claims. Following June 24,
26 2002, claims eligible for coverage under the fund will be limited to
27 medical malpractice liability insurance policies and policies for
28 property insurance covering owner occupied dwellings of less than
29 four dwelling units whose surplus lines insurer subsequently becomes
30 insolvent. The New Jersey Property-Liability Insurance Guaranty
31 Association would continue to operate and maintain the fund for this
32 purpose. Additionally, the bill authorizes the fund to make loans to
33 the New Jersey Property-Liability Insurance Guaranty Association.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1717

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1717.

This bill transfers to the General Fund any and all moneys in excess of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty Fund as of June 24, 2002. Under the provisions of the bill, following June 24, 2002, claims eligible for coverage under the fund will be limited to medical malpractice liability insurance policies and policies for property insurance covering owner occupied dwellings of less than four dwelling units whose surplus lines insurer subsequently becomes insolvent. The New Jersey Property-Liability Insurance Guaranty Association will continue to operate and maintain the fund for this purpose. Additionally, the bill authorizes the fund to make loans to the New Jersey Property-Liability Insurance Guaranty Association.

FISCAL IMPACT

This bill transfers to the General Fund any and all moneys in excess of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty Fund as of June 24, 2002. The fund currently has a balance of approximately \$80,000,000, so approximately \$40,000,000 will be transferred. The \$40,000,000 remaining in the fund will be sufficient to satisfy all existing covered claims.

ASSEMBLY, No. 2514

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 26, 2002

Sponsored by:

Assemblyman DONALD TUCKER

District 28 (Essex)

SYNOPSIS

Provides for run-off of claims and termination of New Jersey Surplus Lines Insurance Guaranty Fund; transfers excess moneys to General Fund.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning surplus lines insurance and amending and
2 supplementing P.L.1984, c.101.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) The Legislature finds and declares:

8 a. The "New Jersey Surplus Lines Insurance Guaranty Fund Act,"
9 P.L.1984, c.101 (C.17:22-6.70 et seq.) enacted 18 years ago in the
10 face of an imminent threat of declaration of insolvency of Ambassador
11 Insurance Company of Vermont, has provided valuable benefits by
12 covering claims of certain claimants against insolvent property and
13 casualty insurers selling insurance in New Jersey as surplus lines.

14 b. That act was amended 15 years ago to include, as covered
15 claims, those claims arising from the declared insolvency of
16 Northeastern Fire Insurance Company of Pennsylvania.

17 c. Claims covered by the New Jersey Surplus Lines Insurance
18 Guaranty Fund included claims by New Jersey residents or claims
19 arising from property permanently located in New Jersey, in an amount
20 up to the lesser of the policy limit or \$300,000, subject to policy
21 deductibles, thereby redistributing some of the economic burden of
22 surplus lines insurer failures.

23 d. It appears that during a significant period of time, the New
24 Jersey Surplus Lines Insurance Guaranty Fund has been running off
25 claims of prior insolvencies and has not been triggered by a new
26 declaration of insolvency entitling coverage to a new class of
27 claimants.

28 e. It appears that the New Jersey Surplus Lines Insurance Guaranty
29 Fund has outlived its intended purpose of covering claims arising from
30 the insolvencies of Ambassador Insurance Company and Northeastern
31 Fire Insurance Company of Pennsylvania.

32 f. While the Legislature believes that it was good public policy to
33 provide surplus lines insurance guaranty benefits, it is no longer
34 necessary to burden the New Jersey Property-Liability Insurance
35 Guaranty Association with running the New Jersey Surplus Lines
36 Insurance Guaranty Fund, a fund that has outlived its intended
37 purpose.

38
39 2. Section 3 of P.L.1984, c.101 (C.17:22-6.72) is amended to read
40 as follows:

41 3. a. "Association" means the New Jersey Property-Liability
42 Insurance Guaranty Association created pursuant to P.L.1974, c.17
43 (C.17:30A-1 et seq.).

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 b. "Covered claim" means an unpaid claim, including a claim for
2 unearned premiums, which arises out of and is within the coverage,
3 and not in excess of the applicable limits of an insurance policy to
4 which this act applies, and which was issued by a surplus lines insurer
5 which was eligible to transact insurance business in this State at the
6 time the policy was issued and which has been determined to be an
7 insolvent insurer on or after June 1, 1984, but prior to June 16, 2002,
8 if (1) the claimant or policyholder is a resident of this State at the time
9 of the occurrence of the insured event for which a claim has been
10 made, or (2) the property from which the claim arises is permanently
11 located in this State.

12 "Covered claim" shall not include any amount due any reinsurer,
13 insurance pool or underwriting association, as subrogation recoveries
14 or otherwise, except that a claim for any such amount, asserted against
15 a person insured under a policy issued by a surplus lines insurer which
16 has become an insolvent insurer, which, if it were not a claim by or for
17 the benefit of a reinsurer, insurer, insurance pool, or underwriting
18 association, would be a "covered claim," may be filed directly with the
19 receiver of the insolvent insurer, but in no event may any such claim
20 be asserted in any legal action against the insured of that insolvent
21 insurer. "Covered claim" shall also not include amounts for interest on
22 unliquidated claims, punitive damages unless covered by the policy,
23 counsel fees for prosecuting suits for claims against the fund, and
24 assessments or charges for failure by an insolvent insurer to have
25 expeditiously settled claims.

26 A "covered claim" shall not include a claim filed with the fund after
27 the final date set by the court for the filing of claims against the
28 liquidator or receiver of an insolvent insurer unless the claimant
29 demonstrates unusual hardship and the commissioner approves of
30 treatment of the claim as a "covered claim." "Unusual hardship" shall
31 be defined in regulations promulgated by the commissioner. With
32 respect to insurer insolvencies pending as of the effective date of this
33 1996 amendatory act, a "covered claim" shall not include a claim filed
34 with the fund: (1) more than one year after the effective date of this
35 1996 amendatory act or (2) the date set by the court for the filing of
36 claims against the liquidator or receiver of the insolvent insurer,
37 whichever date occurs later.

38 c. "Fund" means the New Jersey Surplus Lines Insurance Guaranty
39 Fund created pursuant to section 4 of this act.

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

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1 e. "Member insurer" means an eligible, nonadmitted or surplus lines
2 insurer required to be a member of, and that is subject to, assessments
3 by the fund.

4 f. "Net direct written premiums" means direct gross premiums on
5 insurance policies written by a surplus lines insurer to which this act
6 applies, less return premiums thereon and dividends paid or credited
7 to policyholders on that direct business. If a policy issued by a surplus
8 lines insurer covers risks or exposures only partially in this State, the
9 "net direct written premiums" shall be computed, for assessment
10 purposes, on that portion of the premium subject to the premium
11 receipts tax levied in accordance with section 25 of P.L.1960, c.32
12 (C.17:22-6.59). "Net direct written premiums" do not include
13 premiums on contracts between insurers or reinsurers.

14 g. "Surplus lines insurer" means a nonadmitted insurer approved as
15 an eligible, nonadmitted or unauthorized insurer pursuant to section 11
16 of P.L.1960, c.32 (C.17:22-6.45) at the time the policies were issued
17 against which a covered claim may be filed in accordance with this act.
18 (cf: P.L.1996, c.156, s.3.)

19
20 3. Section 4 of P.L.1984, c.101 (C.17:22-6.73) is amended to read
21 as follows:

22 4. There is created a private, nonprofit, unincorporated, legal entity
23 to be known as New Jersey Surplus Lines Insurance Guaranty Fund.
24 All surplus lines insurers shall be and remain member insurers of the
25 fund as a condition of their continued eligibility pursuant to section 11
26 of P.L.1960, c.32 (C.17:22-6.45). The fund shall be managed and
27 administered by the New Jersey Property-Liability Insurance Guaranty
28 Association. The association shall exercise all of the powers vested in
29 the fund under this act, and such other powers as may be necessary or
30 appropriate to the fulfilling of its responsibilities under this act. The
31 association shall administer the affairs of the fund in accordance with
32 the "New Jersey Property-Liability Guaranty Association Act,"
33 P.L.1974, c.17 (C.17:30A-1 et seq.) and its plan of operation adopted
34 pursuant to section 9 (C.17:30A-9), insofar as the provisions of that
35 act and that plan are not thereof inconsistent with the provisions of
36 this act, and subject to any amendments to the plan as may be
37 necessary or appropriate to effectuate the purposes of this act. After
38 the certified excess moneys in the fund are transferred to the General
39 Fund pursuant to section 5 of P.L.1984, c.101 (C.17:22-6.74), the
40 association shall be responsible for the run-off , wind-up and
41 termination of the fund in accordance with the provisions of this
42 amendatory and supplementary act.

43 In order to assist the association in implementing the provisions of
44 this act, there is created an advisory body to the board of directors of
45 the association to be comprised of two members representing eligible
46 surplus lines insurers and two members representing surplus lines

1 agents, to be appointed by and to serve at the pleasure of the
2 commissioner. The association shall consult the advisory body on any
3 matter relating to the provisions of P.L.1984, c.101 (C.17:22-6.70 et
4 seq.).

5 (cf: P.L.1984, c.207, s.3.)

6

7 4. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to read
8 as follows:

9 5. a. The fund shall:

10 (1) Be obligated to the extent of the covered claims against an
11 insolvent insurer incurred prior to or 30 days after the determination
12 of insolvency, or before the policy expiration date, if less than 30 days
13 after that determination, or before the policyholder replaces the policy
14 or causes its cancellation, if he does so within 30 days of the
15 determination. The fund's obligation for covered claims shall not be
16 greater than \$300,000.00 per occurrence, subject to any applicable
17 deductible contained in the policy. The commissioner may adjust the
18 fund's obligations for covered claims based on the monies available in
19 the fund. In no event shall the fund be obligated to a policyholder or
20 claimant in excess of the limits of liability of the insolvent insurer
21 stated in the policy from which the claim arises;

22 (2) Be deemed the insurer to the extent of its obligation on the
23 covered claims and to such extent shall have all rights, duties, and
24 obligations of the insolvent insurer as if the insurer had not become
25 insolvent;

26 (3) Assess member insurers in accordance with section 6 of this act
27 in amounts necessary to pay:

28 (a) Obligations of the fund under paragraph (1) of this subsection,

29 (b) Expenses of handling covered claims,

30 (c) Any other expenses incurred in the implementation of the
31 provisions of this act;

32 (4) Investigate claims brought against the fund; and adjust,
33 compromise, settle, and pay covered claims to the extent of the fund's
34 obligation; and deny all other claims; and may review settlements,
35 releases and judgments to which the insolvent insurer or its
36 policyholders were parties to determine the extent to which the
37 settlements, releases and judgments may be properly contested;

38 (5) Notify those persons as the commissioner directs under section
39 8 of this act;

40 (6) Handle claims through the association's employees or
41 representatives, or through one or more insurers or other persons
42 designated as servicing facilities;

43 (7) Pay the other expenses of the association in administering the
44 provisions of this act;

45 (8) Immediately upon receipt of the commissioner's certification of
46 excess moneys in the fund in accordance with subsection c. of this

1 section, transfer to the General Fund any and all excess moneys in the
2 fund in accordance with the certification of the commissioner;

3 (9) Following transfer of all certified excess moneys in the fund,
4 transfer to the General Fund any moneys remaining in the fund after
5 payment of all covered claims and reasonable administrative expenses
6 in accordance with this amendatory and supplementary act; and

7 (10) After the certified excess moneys in the fund are transferred
8 to the General Fund:

9 (a) Be run-off, wound-up and terminated in accordance with the
10 provisions of this amendatory and supplementary act; and

11 (b) Be abolished upon certification by the association to the
12 commissioner that it has received the commissioner's certification of
13 excess moneys in the fund, that it has administered the run-off, wind-
14 up, and termination of the fund in accordance with this amendatory
15 and supplementary act, that it has paid all covered claims, and that it
16 has reimbursed itself for the administrative expenses of run-off, wind-
17 up, and termination of the fund.

18 b. The fund may:

19 (1) Sue or be sued;

20 (2) Negotiate and become a party to those contracts which are
21 necessary to carry out the purpose of this act;

22 (3) Perform those other acts which are necessary or appropriate to
23 effectuate the purpose of this act; and

24 (4) [Refund to the member insurers in proportion to the
25 contribution of each member insurer that amount which the
26 commissioner determines to be in excess of the needs of the fund; and]
27 (Deleted by amendment, P.L. , c. .)

28 (5) With the approval of the commissioner, borrow monies from
29 any source, including but not limited to the New Jersey
30 Property-Liability Insurance Guaranty Association, in accordance with
31 subsection b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may
32 be necessary to effectuate the purposes of that act, except that the use
33 of the proceeds of any loans shall be limited to the payment of covered
34 claims, including claim adjustment expenses.

35 c. The commissioner shall certify the extent to which the moneys
36 in the fund are no longer reasonably needed to pay covered claims and
37 reasonable administrative expenses. Such funds as the commissioner
38 certifies are no longer reasonably needed to pay covered claims and
39 reasonable administrative expenses shall be certified as excess moneys
40 in the fund. The association shall provide to the commissioner or the
41 commissioner's designee access to any records and information the
42 commissioner requires in the calculation and certification of excess
43 moneys in the fund. The cost of performing that computation shall be
44 reimbursed from or paid by the fund.

45 (cf: P.L.1984, c.207, s. 4.)

1 5. This act shall take effect immediately and be retroactive to June
2 15, 2002.

3

4

5

STATEMENT

6

7 This bill provides for the run-off of covered claims of the New
8 Jersey Surplus Lines Insurance Guaranty Fund; the termination of the
9 fund's affairs, and, upon certification by the Commissioner of Banking
10 and Insurance that moneys in the fund are no longer needed to pay
11 covered claims and administrative expenses, the transfer of those
12 excess moneys to the General Fund.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2514

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2514.

This Assembly Committee Substitute for Assembly Bill No. 2514 transfers to the General Fund any and all moneys in excess of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty Fund as of June 24, 2002. Under the provisions of the substitute, following June 24, 2002, claims eligible for coverage under the fund will be limited to medical malpractice liability insurance policies and policies for property insurance covering owner occupied dwellings of less than four dwelling units whose surplus lines insurer subsequently becomes insolvent. The New Jersey Property-Liability Insurance Guaranty Association will continue to operate and maintain the fund for this purpose. Additionally, the substitute authorizes the fund to make loans to the New Jersey Property-Liability Insurance Guaranty Association.

FISCAL IMPACT:

The substitute transfers to the General Fund any and all moneys in excess of \$40,000,000 in the New Jersey Surplus Lines Insurance Guaranty Fund as of June 24, 2002. The fund currently has a balance of approximately \$80,000,000, so approximately \$40,000,000 will be transferred. The \$40,000,000 remaining in the fund will be sufficient to satisfy all existing covered claims.