

17:27A-4

LEGISLATIVE HISTORY CHECKLIST
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(Insurance holding)

NJSA: 17:27A-4

LAWS OF: 1996 CHAPTER: 155

BILL NO: S933

SPONSOR(S): Cardinale

DATE INTRODUCED: March 7, 1996

COMMITTEE: ASSEMBLY: Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: No Senate committee substitute enacted

DATE OF PASSAGE: ASSEMBLY: December 12, 1996

SENATE: May 16, 1996

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
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HEARINGS: No

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SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 933

STATE OF NEW JERSEY

ADOPTED MARCH 21, 1996

Sponsored by Senator CARDINALE

1 AN ACT concerning certain dividends paid by certain domestic
2 insurers and amending P.L.1994, c.189.

3

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

6

7 1. Section 1 of P.L.1994, c.189 (C. 17:17-20) is amended to read
8 as follows:

9 1. a. An insurer that is formed under the laws of another state and
10 is admitted to transact the business of insurance in this State may
11 become a domestic insurer upon the commissioner's determination that
12 the company has complied with all applicable requirements of Title 17
13 of the Revised Statutes relating to the formation of a domestic insurer
14 of the same type. If the commissioner approves the domestication of
15 a foreign insurer pursuant to this section, the insurer shall be entitled
16 to a certificate of authority equivalent to that which was previously
17 held as a foreign insurer and the insurer shall be subject to the
18 authority and jurisdiction of this State. The newly domesticated
19 insurer shall amend its articles of incorporation to provide that the
20 corporation is a continuation of the corporate existence of the original
21 foreign corporation through the adoption of this State as its corporate
22 domicile, and that the original date of incorporation in its original
23 domiciliary state is the date of incorporation of such domestic insurer.
24 For purposes of the premium tax laws, pursuant to P.L.1945, c.132
25 (C.54:18A-1 et seq.), however, the date of licensure shall be the date
26 on which the commissioner approves the domestication in this State.

27 b. Any domestic insurer may, upon the written approval of the
28 commissioner, transfer its domicile to any other state in which it is
29 admitted to transact the business of insurance. The company shall
30 cease to be a domestic insurer as of the effective date of the transfer
31 approved by the commissioner. Such a company shall be admitted to
32 transact the business of insurance in this State if the company is

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 otherwise qualified as a foreign insurer pursuant to the applicable
2 requirements of Title 17 of the Revised Statutes.

3 c. Every insurer authorized to transact business in the State shall
4 notify the commissioner of the details of any proposed transfer of
5 domicile at least 60 days prior to the effective date of the proposed
6 transfer, however, the commissioner may approve a shorter period for
7 providing such notice. Such an insurer shall file promptly any
8 resulting amendments to corporate documents filed or required to be
9 filed with the commissioner.

10 d. Prior to granting approval for any foreign insurer to become a
11 domestic insurer, or for a domestic insurer to transfer its domicile to
12 another state, the commissioner may conduct whatever investigations,
13 examinations or hearings he deems necessary, and may subject the
14 issuance of his approval to the conditions and restrictions that he
15 determines are reasonable and necessary for the protection of the
16 company's policyholders or the public.

17 e. The transfer of domicile of an insurer pursuant to the provisions
18 of this section shall not be construed to alter either the existing rights,
19 franchises and interests, or the duties, obligations and liabilities of the
20 insurer transferring domicile, except as otherwise provided by law.
21 Insurers who transfer domicile shall continue to be subject to all the
22 liabilities, claims and demands against the company which were in
23 existence prior to the transfer of domicile. Any action or proceeding
24 pending at the time of the consummation of the process by which the
25 domicile is transferred in which the company is a party shall not abate
26 or discontinue by reason of the transfer of domicile, but shall be
27 prosecuted to a final resolution in the same manner as if the transfer
28 of domicile had not taken place.

29 f. The certificate of authority, insurance producer appointments
30 and licenses, rating systems and other documents required to be
31 maintained for regulatory purposes, which are in existence and
32 approved for use in this State at the time any insurer licensed to
33 transact the business of insurance in this State transfers its corporate
34 domicile to this or any other state by merger, consolidation, transfer,
35 or any other lawful method, shall continue in full force and effect upon
36 such transfer if the commissioner is satisfied that the insurer remains
37 duly qualified to transact the business of insurance in this State. All
38 outstanding policies of any transferring insurer shall remain in full
39 force and effect and need not be endorsed as to the new name of the
40 company or its new location unless so ordered by the commissioner.
41 To the extent required by law, every transferring insurer shall file new
42 policy forms with the commissioner on or before the effective date of
43 the transfer, but may use existing policy forms with appropriate
44 endorsements if allowed by, and under such conditions as approved by,
45 the commissioner.

1 g. When two foreign insurers of the same insurance holding
2 company system domiciled in different states are approved for
3 domestication pursuant to subsection a. of this section during the
4 calendar year following enactment of P.L. 1994, c. 189 (C. 17:17-20
5 et al), these insurers shall thereafter file financial statements in this
6 State pursuant to R.S. 17:23-1 that are consistent with the financial
7 statements filed by each other with respect to the same or similar
8 financial transactions notwithstanding any inconsistent financial
9 statements filed previously as required by insurance regulators of the
10 prior respective domiciles. Any dividends previously paid by these
11 insurers pursuant to the laws of the former domiciliary states in excess
12 of the earned surplus of these insurers shall, to the extent of such
13 excess, be reported on the financial statements filed by each insurer
14 after domestication in this State as a return of capital distributed from
15 gross paid in and contributed surplus rather than as negative earnings.
16 (cf: P.L.1994, c.189, s.1)

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18 2. This act shall take effect immediately.

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23 Clarifies accounting treatment of certain dividends paid by certain
24 redomesticated insurers.

SENATE, No. 933

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senator CARDINALE

1 AN ACT concerning certain dividends paid by domestic insurers and
2 amending P.L.1970, c.22.

3

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

6

7 1. Section 4 of P.L.1970, c.22 (C. 17:27A-4) is amended to read
8 as follows:

9 4. Standards. a. Transactions with affiliates.

10 (1) Transactions by registered insurers with their affiliates shall be
11 subject to the following standards:

12 (a) The terms shall be fair and reasonable;

13 (b) Charges or fees for services performed shall be reasonable;

14 (c) Expenses incurred and payment received shall be allocated to
15 the insurer in conformity with customary insurance accounting
16 practices consistently applied;

17 (d) The books, accounts and records of each party to all such
18 transactions shall be so maintained as to clearly and accurately disclose
19 the precise nature and details of the transactions, including such
20 accounting information as is necessary to support the reasonableness
21 of the charges or fees to the respective parties; and

22 (e) The insurer's surplus as regards policyholders following any
23 transaction with affiliates or dividends or distributions to shareholder
24 affiliates shall be reasonable in relation to the insurer's outstanding
25 liabilities and adequate to its financial needs.

26 (2) The following transactions involving a domestic insurer and any
27 person in its holding company system may not be entered into unless
28 the insurer has notified the commissioner in writing of its intention to
29 enter into that transaction at least 30 days prior thereto, or such
30 shorter period as the commissioner may permit, and the commissioner
31 has not disapproved it within that 30-day period:

32 (a) Sales, purchases, exchanges, loans or extensions of credit,
33 guarantees or other contingent obligations, investments, or loans
34 collateralized by the stock of a subsidiary or affiliate, provided such

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Matter underlined thus is new matter.

1 transactions equal or exceed: (i) with respect to insurers other than
2 life insurers, the lesser of 3% of the insurer's admitted assets or 25%
3 of surplus as regards policyholders, as of December 31 next preceding;
4 (ii) with respect to life insurers, 3% of the insurer's admitted assets, as
5 of December 31 next preceding;

6 (b) Loans or extensions of credit to any person who is not an
7 affiliate, in which the insurer makes such loans or extensions of credit
8 with the agreement or understanding that the proceeds of such
9 transactions, in whole or in substantial part, are to be used to make
10 loans or extensions of credit to, to purchase assets of, or to make
11 investments in, any affiliate of the insurer making those loans or
12 extensions of credit, provided those transactions are equal to or
13 exceed: (i) with respect to insurers other than life insurers, the lesser
14 of 3% of the insurer's admitted assets or 25% of surplus as regards
15 policyholders, as of December 31 next preceding; (ii) with respect to
16 life insurers, 3% of the insurer's admitted assets, as of December 31
17 next preceding;

18 (c) Reinsurance agreements or modifications thereto in which the
19 reinsurance premium or a change in the insurer's liabilities equals or
20 exceeds 5% of the insurer's surplus as regards policyholders, as of
21 December 31 next preceding, including those agreements which may
22 require as consideration the transfer of assets from an insurer to a
23 non-affiliate if an agreement or understanding exists between the
24 insurer and non-affiliate that any portion of those assets will be
25 transferred to one or more affiliates of the insurer;

26 (d) All management agreements, service contracts and all
27 cost-sharing arrangements; and

28 (e) Any material transactions, specified by regulation, which the
29 commissioner determines may adversely affect the interests of the
30 insurer's policyholders. Nothing herein contained shall be deemed to
31 authorize or permit any transactions which, in the case of an insurer
32 which is not a member of the same holding company system, would be
33 otherwise contrary to law.

34 (3) A domestic insurer may not enter into transactions which are
35 part of a plan or series of like transactions with persons within the
36 holding company system if the purpose of those separate transactions
37 is to avoid the statutory threshold amount and thus avoid the review
38 that would otherwise occur. If the commissioner determines that such
39 separate transactions were entered into over any 12-month period for
40 that purpose, he may exercise his authority under section 8 of
41 P.L.1993, c.241 (C.17:27A-9.1).

42 (4) The commissioner, in reviewing transactions pursuant to
43 paragraph (2) of this subsection, shall consider whether the
44 transactions comply with the standards set forth in paragraph (1) of
45 this subsection and whether they may adversely affect the interests of
46 policyholders.

1 (5) The commissioner shall be notified within 30 days of any
2 investment of the domestic insurer in any one corporation if the total
3 investment in that corporation by the insurance holding company
4 system exceeds 10% of that corporation's voting securities.

5 (6) The commissioner may by regulation specify certain types of
6 transactions that need not be submitted for review under this
7 subsection if he determines that those transactions would not have a
8 significant impact on the financial condition or methods of operation
9 of the insurer.

10 b. Adequacy of surplus. For purposes of this chapter, in
11 determining whether an insurer's surplus as regards policyholders is
12 reasonable in relation to the insurer's outstanding liabilities and
13 adequate to its financial needs, the following factors, among others,
14 shall be considered:

15 (1) The size of the insurer as measured by its assets, capital and
16 surplus, reserves, premium writings, insurance in force and other
17 appropriate criteria;

18 (2) The extent to which the insurer's business is diversified among
19 the several lines of insurance;

20 (3) The number and size of risks insured in each line of business;

21 (4) The extent of the geographical dispersion of the insurer's
22 insured risks;

23 (5) The nature and extent of the insurer's reinsurance program;

24 (6) The quality, diversification, and liquidity of the insurer's
25 investment portfolio;

26 (7) The recent past and projected future trend in the size of the
27 insurer's surplus as regards policyholders;

28 (8) The surplus as regards policyholders maintained by other
29 comparable insurers in respect of the factors enumerated in this
30 subsection;

31 (9) The adequacy of the insurer's reserves;

32 (10) The quality and liquidity of investments in affiliates. The
33 commissioner may discount any such investments or treat any such
34 investment as a disallowed asset for purposes of determining the
35 adequacy of surplus as regards policyholders whenever in his judgment
36 such investment so warrants; and

37 (11) The quality of the insurer's earnings and the extent to which
38 the reported earnings include extraordinary items.

39 c. Dividends and other distributions.

40 (1) A domestic insurer subject to registration under section 3 of
41 P.L.1970, c.22 (C.17:27A-3) shall report to the commissioner any
42 dividend or distribution to its shareholders within five business days
43 following declaration and at least 30 days, after receipt of that report
44 by the commissioner, prior to payment. For good cause shown, the
45 commissioner may reduce the notification period prior to payment to
46 a period of not less than 10 days. The commissioner shall limit or

1 disallow the payment of any dividend or distribution if he determines
2 that the insurer's surplus as regards policyholders is not reasonable in
3 relation to its outstanding liabilities and adequate to its financial needs
4 pursuant to subsection b. of this section or if the insurer is otherwise
5 found to be in a hazardous financial condition.

6 (2) (a) No domestic insurer subject to registration under section
7 3 shall pay any extraordinary dividend or make any other extraordinary
8 distribution to its shareholders until (i) 30 days after the commissioner
9 has received notice of the declaration thereof and has not within such
10 period disapproved such payment, or (ii) the commissioner shall have
11 approved such payment within such 30-day period.

12 (b) For purposes of this paragraph, an extraordinary dividend or
13 distribution includes any dividend or distribution of cash or other
14 property, whose fair market value together with that of other
15 dividends or distributions made within the preceding 12 months
16 exceeds the greater of (i) 10% of such insurer's surplus as regards
17 policyholders as of December 31 next preceding, or (ii) the net gain
18 from operations of such insurer, if such insurer is a life insurer, or the
19 net income, if such insurer is not a life insurer, not including realized
20 capital gains, for the 12-month period ending December 31 next
21 preceding, but shall not include pro rata distributions of any class of
22 the insurer's own securities.

23 (c) Notwithstanding any other provision of law, a domestic insurer
24 may declare an extraordinary dividend or distribution which is
25 conditional upon the commissioner's approval thereof, and such a
26 declaration shall confer no rights upon policyholders until (i) 30 days
27 after the commissioner has received notice of the declaration thereof
28 and has not within such period disapproved such payment, or (ii) the
29 commissioner shall have approved such payment within such 30-day
30 period.

31 (3) Except for extraordinary dividends or distributions paid
32 pursuant to paragraph (2) of this subsection, all dividends or
33 distributions to shareholders shall be declared or paid by insurers
34 subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-3)
35 from only earned surplus. Dividends or distributions, including
36 extraordinary dividends or distributions, lawfully paid pursuant to this
37 subsection that exceed earned surplus shall to the extent of that excess
38 be deemed a return of capital distributed from gross "paid in and
39 contributed surplus." For purposes of this paragraph, "earned surplus"
40 means unassigned funds (surplus), as reported on the insurer's annual
41 statement as of December 31 next preceding, less unrealized capital
42 gains and revaluation of assets.

43 d. Management of domestic insurers subject to registration.

44 (1) Notwithstanding the control of a domestic insurer by any
45 person, the officers and directors of the insurer shall not thereby be
46 relieved of any obligation or liability to which they would otherwise be

1 subject by law, and the insurer shall be managed so as to assure its
2 separate operating identity consistent with P.L.1970, c.22
3 (C.17:27A-1 et seq.).

4 (2) Nothing herein shall preclude a domestic insurer from having
5 or sharing a common management or cooperative or joint use of
6 personnel, property or services with one or more other persons under
7 arrangements meeting the standards of paragraph (1) of subsection a.
8 of this section.

9 (3) Not less than one-third of the directors of a domestic insurer,
10 and not less than one-third of the members of each committee of the
11 board of directors of any domestic insurer, shall be persons who are
12 not officers or employees of that insurer or of any entity controlling,
13 controlled by, or under common control with, that insurer and who are
14 not beneficial owners of a controlling interest in the voting securities
15 of that insurer or any such entity. At least one such person shall be
16 included in any quorum for the transaction of business at any meeting
17 of the board of directors or any committee thereof.

18 (4) The board of directors of a domestic insurer shall establish one
19 or more committees comprised solely of directors who are not officers
20 or employees of the insurer or of any entity controlling, controlled by,
21 or under common control with, the insurer and who are not beneficial
22 owners of a controlling interest in the voting securities of the insurer
23 or any such entity. The committee shall be responsible for
24 recommending the selection of independent certified public
25 accountants, reviewing the insurer's financial condition, the scope and
26 results of the independent audit and any internal audit, nominating
27 candidates for director for election by shareholders or policyholders,
28 evaluating the performance of officers deemed to be principal officers
29 of the insurer and recommending to the board of directors the
30 selection and compensation, including bonuses or other special
31 payments, of the principal officers.

32 (5) The provisions of paragraphs (3) and (4) of this subsection d.
33 shall not apply to a domestic insurer if the person controlling the
34 insurer is an entity having a board of directors and committees thereof
35 that substantially meet the requirements of those paragraphs.
36 (cf: P.L.1995, c.338, s.2)

37

38 2. This act shall take effect immediately and, at the election of the
39 domestic insurer, may apply to dividends or distributions made in
40 previous years to the extent that the treatment of those dividends or
41 distributions continues to have an effect on current financial
42 statements of the insurer.

STATEMENT

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This bill amends the law which regulates insurance holding company systems to clarify the accounting treatment of dividends lawfully paid that exceed earned surplus. The bill provides that the amount by which those dividends exceed earned surplus is to be considered return of capital for accounting purposes.



Clarifies accounting treatment of certain dividends lawfully paid by insurance holding company systems.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 933

STATE OF NEW JERSEY

DATED: SEPTEMBER 16, 1996

The Assembly Insurance Committee reports favorably Senate, No. 933 (SCS).

This bill amends the law which provides for the domestication of certain foreign insurers to clarify the accounting treatment of dividends paid in excess of earned surplus by certain foreign property-casualty insurers that became domestic insurers in 1995. The bill provides that the amount by which those dividends exceed earned surplus is to be considered return of capital and not negative earnings for accounting purposes.

This bill is identical to the Assembly Committee Substitute for Assembly, No. 1790.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 933

STATE OF NEW JERSEY

DATED: MARCH 21, 1996

The Senate Commerce Committee reports favorably the Senate Committee Substitute for Senate Bill No. 933.

This bill amends the law which provides for the domestication of certain foreign insurers to clarify the accounting treatment of dividends paid in excess of earned surplus by certain foreign property-casualty insurers that became domestic insurers in 1995. The bill provides that the amount by which those dividends exceed earned surplus is to be considered return of capital and not negative earnings for accounting purposes.