

17:22-6.41

**LEGISLATIVE HISTORY CHECKLIST**  
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**NJSA:** 17:22-6.41 et al ("Surplus Lines Law")

**LAWS OF:** 1996 **CHAPTER:** 69

**BILL NO:** A1572

**SPONSOR(S):** Zecker

**DATE INTRODUCED:** February 22, 1996

**COMMITTEE:** **ASSEMBLY:** Insurance

**SENATE:** ---

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** March 18, 1996

**SENATE:** May 30, 1996

**DATE OF APPROVAL:** July 12, 1996

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** No

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBP:pp

P.L. 1996, CHAPTER 69, *approved July 12, 1996*  
Assembly, No. 1572

1 **AN ACT** concerning surplus lines insurers, amending P.L.1952, c.330  
2 and P.L.1987, c.293, amending and supplementing P.L.1960, c.32,  
3 and repealing section 17 of P.L.1960, c. 32.

4

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

7

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

10 7. As used in this surplus lines law:

11 (a) "Surplus lines agent" means an individual licensed as **[provided**  
12 **in this chapter]** an insurance producer with surplus lines authority as  
13 provided in P.L.1987, c.293 (C.17:22A-1 et seq.) to handle the  
14 placement of insurance coverages on behalf of unauthorized insurers.

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

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

21 (d) "Commissioner" means the Commissioner of Insurance of the  
22 State of New Jersey.

23 (e) "Certificate of insurance" means permanent evidence of  
24 insurance on a form approved by the commissioner and issued by a  
25 surplus lines agent who has filed evidence of his binding authority with  
26 the commissioner on behalf of an alien insurer. When issued other  
27 than on behalf of an alien insurer, **[the]** an initial certificate of  
28 insurance will be treated as temporary evidence of insurance, pending  
29 the issuance of a policy. "Certificate of insurance" also means  
30 evidence of a renewal of that insurance provided: (1) there is no  
31 change in the terms or amounts of coverage; (2) the coverage is still  
32 eligible for export; and (3) the insured may request the issuance of a  
33 new policy.

34 (f) "Cover note," "binder" or "confirmation of insurance," means

**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 temporary evidence of insurance, to be replaced by a policy or  
2 certificate of insurance.

3 (cf: P.L.1981, c. 250, s.1)

4

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

7 8. If certain insurance coverages of subjects resident, located, or  
8 to be performed in this State cannot be procured from authorized  
9 insurers, such coverages, hereinafter designated "surplus lines," may  
10 be procured from unauthorized insurers, subject to the following  
11 conditions:

12 (a) The insurance must be eligible for export under section 9 of  
13 **[this act] P.L.1960, c.32 (C.17:22-6.43);**

14 (b) The insurer must be an eligible surplus lines insurer under  
15 section 11 of **[this act] P.L.1960, c.32 (C.17:22-6.45);**

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

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

21 (e) No surplus lines agent shall exercise binding authority in this  
22 State on behalf of any insurer unless the agent has first filed with the  
23 commissioner **[and the commissioner has approved] for informational**  
24 **purposes and not for the purpose of approval or disapproval** the  
25 written agreement between the agent and the insurer setting forth the  
26 terms, conditions and limitations governing the exercise of the binding  
27 authority by the agent. A copy of any amendments to the agreement  
28 and of any notice of cancellation or termination of the agreement shall  
29 be filed by the agent with the commissioner no later than **[5] 10** days  
30 after adoption thereof.

31 The agreement filed pursuant to this section shall be considered and  
32 treated as a confidential document, and shall not be available for  
33 inspection by the public.

34 The agreement shall include the following items:

35 (1) A description of the classes of insurance for which the agent  
36 holds binding authority;

37 (2) The geographical limits upon the exercise of binding authority  
38 by the agent;

39 (3) The maximum dollar limitation on the binding authority of the  
40 agent for any one risk for each class of insurance written by the agent;

41 (4) The maximum policy period for which the agent may bind a  
42 risk;

43 (5) If the binding authority is delegable by the agent, a prohibition  
44 against the delegation without the prior written approval of the  
45 insurer.

46 If an agent who is qualified in accordance with this section to

1 exercise binding authority on behalf of an insurer delegates the binding  
2 authority to any other agent, the agent to whom the authority is  
3 delegated shall not exercise the same until a copy of the instrument  
4 delegating the binding authority shall first have been filed with ~~and~~  
5 ~~approved by~~ the commissioner for informational purposes and not for  
6 the purpose of approval or disapproval. The instrument delegating the  
7 binding authority shall include an identification of the binding authority  
8 agreement between the delegating agent and the insurer.

9 (cf: P.L.1981, c.250, s.2)

10  
11 3. Section 9 of P.L.1960, c.32 (C.17:22-6.43) is amended to read  
12 as follows:

13 9. No insurance coverage shall be eligible for export unless it meets  
14 all of the following conditions:

15 (a) The ~~full amount of~~ insurance coverage required must not be  
16 procurable, after a diligent effort has been made to do so, from among  
17 the insurers authorized to transact that kind and class of insurance in  
18 this State, and the ~~amount of~~ insurance coverage exported shall be  
19 only ~~the excess over the amount and kind~~ that coverage not so  
20 procurable from authorized insurers~~.~~ , provided, however, that  
21 associated commercial general liability and commercial property  
22 coverages may be exported along with such unprocurable coverage;  
23 and

24 (b) The premium rate at which the coverage is exported shall not be  
25 lower than the lowest rate which has been filed by or on behalf of any  
26 authorized insurer~~.~~ , provided, however, that any reduction in  
27 coverage or limits as compared to policies filed by authorized insurers  
28 may be exported at a commensurate reduction in premium rate; and

29 (c) ~~The policy or contract form under which the insurance is~~  
30 ~~exported shall not provide coverage different from similar contracts on~~  
31 ~~file and in actual current use in this State by the majority of authorized~~  
32 ~~insurers actually writing similar coverages on similar risks; except, that~~  
33 ~~a coverage may be exported under a unique form of policy designed~~  
34 ~~for use with respect to a particular subject of insurance if a copy of~~  
35 ~~such form is filed with the commissioner by the surplus lines agent~~  
36 ~~desiring to use the same. Said form shall be deemed approved by the~~  
37 ~~commissioner unless within 10 days after receipt of same the~~  
38 ~~commissioner shall make a finding that the use of such form is not~~  
39 ~~reasonably necessary for the principal purposes of the coverage or that~~  
40 ~~its use would be contrary to the purposes of this surplus lines law.]~~

41 The policy form or contract under which the insurance is written shall  
42 provide coverage under substantially the same terms and conditions as  
43 that provided in policy forms or contracts which are currently  
44 approved by the commissioner for use in the admitted market for the  
45 same line or lines of insurance. Notwithstanding the foregoing, the  
46 surplus lines agent may file with the commissioner a policy form or

1 contract which modifies the coverage provided for in forms approved  
2 in the admitted market if the modification meets one of the following  
3 criteria: (1) the modification is reasonable giving consideration to past  
4 and prospective loss experience of the risk or risks to be insured and  
5 the modification facilitates the availability of coverage for such risk or  
6 risks which coverage would otherwise not be available at a reasonable  
7 cost; or (2) the modification renders the form unique and designed for  
8 use with respect to a particular subject of insurance.

9 At least 30 days before the effective date of any type of policy form  
10 or contract which deviates from the standard form, a surplus lines  
11 agent shall file the policy form or contract with the commissioner,  
12 together with a statement which sets forth the manner in which the  
13 form deviates from the standard form or a previously filed form, in  
14 accordance with the criteria set forth in paragraph (1) or (2) of this  
15 subsection, and the reasons for the deviation. If, following the filing  
16 of the policy form or contract the commissioner finds that it does not  
17 meet the criteria set forth in this subsection, he may order that the  
18 policy form or contract be disapproved or withdrawn and that no such  
19 policy forms or contracts thereafter be issued or renewed.

20 Except, that the commissioner shall by rules and regulations declare  
21 eligible for export generally and notwithstanding the provisions of  
22 subsections (a), (b) and (c) above, any class or classes of insurance  
23 coverage or risk for which he finds, after a hearing, which he shall hold  
24 annually or more often, of which notice thereof was given to each  
25 insurer authorized to transact such class or classes in this State, that  
26 there is no reasonable or adequate market among authorized insurers.  
27 The notice of such hearing shall also identify any type of policy form  
28 or contract which deviates from the standard form approved in the  
29 admitted market that has been disapproved or withdrawn by the  
30 commissioner during the preceding year, and shall provide interested  
31 parties with the opportunity to present relevant information at the  
32 hearing for the commissioner's consideration. Any such rules and  
33 regulations shall continue in effect during the existence of the  
34 conditions upon which predicated, but subject to earlier termination by  
35 the commissioner. The commissioner shall notify all surplus lines  
36 agents of such termination.

37 (cf: P.L.1960, c.32, s.9)

38

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

41 11. No surplus lines agent shall place any coverage with any  
42 unauthorized insurer which is not then an eligible surplus lines insurer  
43 as provided for under this section. No unauthorized insurer shall be  
44 or become an eligible surplus lines insurer unless made eligible by the  
45 commissioner in accordance with the following conditions:

46 (a) Eligibility of the insurer must be requested in writing by a

1 licensed surplus lines agent;

2 (b) The insurer must be currently an authorized insurer in the state  
3 or country of its domicile as to the kind or kinds of insurance  
4 proposed to be so placed, and must have been such an insurer for not  
5 less than one full year preceding; or must be the subsidiary of an  
6 admitted insurer or of an already eligible surplus lines insurer that has  
7 been so admitted or eligible for a period of not less than one full year  
8 preceding;

9 (c) Before granting eligibility the requesting surplus lines agent or  
10 the insurer shall furnish the commissioner with duly authenticated  
11 copies of its current annual financial statement, one in the language  
12 and monetary values of the country of the insurer, and the other in the  
13 English language and with all monetary values therein expressed in  
14 United States dollars, at the current exchange rate shown in the  
15 statement, and with such additional information relative to the insurer  
16 as the commissioner may require;

17 (d) The insurer shall establish satisfactory evidence of financial  
18 integrity, and:

19 (1) Have capital and surplus, or its equivalent under the laws of its  
20 domiciliary jurisdiction, which is not less than twice the amount of  
21 minimum capital and surplus required for like admitted insurers or  
22 \$15,000,000, whichever is greater; except that unauthorized insurers  
23 already eligible under this act shall have at least \$10,000,000 by  
24 December 31, 1996; at least \$12,500,000 by December 31, 1997; and  
25 \$15,000,000 by December 31, 1998. In addition, an alien insurer shall  
26 maintain in the United States, as the sole security requirement to  
27 qualify for eligibility in this State, an irrevocable trust fund in a state  
28 or federally chartered bank in an amount not less than~~[\$1,500,000.00]~~  
29 \$2,500,000 for the protection of all of its policyholders in the United  
30 States; provided, however, that an alien insurer eligible for surplus  
31 lines may be required to deposit securities in New Jersey in an amount  
32 deemed appropriate by the commissioner as a condition of maintaining  
33 its eligibility status. The trust fund shall consist of cash, securities,  
34 letters of credit, or of investments of substantially the same character  
35 and quality as those which are eligible investments for the capital and  
36 statutory reserves of admitted insurers authorized to write like kinds  
37 of insurance in this State. The trust fund shall not be included in any  
38 calculation of capital and surplus or its equivalent and shall have an  
39 expiration date which at no time shall be less than five years. In lieu  
40 of the above capital and surplus requirements, and trust fund amount,  
41 any Lloyd's or other similar group of alien insurers, which group  
42 includes unincorporated individual insurers shall maintain a trust fund  
43 of not less than \$50,000,000.00 as security to the full amount thereof  
44 for all policyholders and creditors in the United States of each member  
45 of the group, and the trust shall likewise comply with the terms and  
46 conditions hereinabove set forth. The credit for reinsurance

1 requirements of sections 2 and 3 of P.L.1993, c.243 (C.17:51B-2 and  
2 17:51B-3) shall not apply to an eligible alien surplus lines insurer that  
3 appears on the quarterly listing prepared by the International Insurers  
4 Department (IID) of the National Association of Insurance  
5 Commissioners and that provides the commissioner annually with a  
6 copy of such insurer's current Schedule R filing and such other  
7 information concerning ceded reinsurance that the International  
8 Insurers Department or the commissioner may from time to time  
9 require. Any insurance exchange created by the laws of an individual  
10 state may be approved by the commissioner as an eligible insurer under  
11 the provisions of this section, and shall maintain capital and surplus,  
12 or the substantial equivalent thereof, of not less than \$35,000,000.00  
13 in the aggregate. For insurance exchanges which maintain funds in an  
14 amount acceptable to the commissioner for the protection of all  
15 insurance exchange policyholders, each individual syndicate, except  
16 those syndicates which have elected and qualify for S corporation  
17 status pursuant to subsection (a) of section 1362 of the federal Internal  
18 Revenue Code of 1986, 26 U.S.C.§1362, shall maintain minimum  
19 capital and surplus, or the substantial equivalent thereof, of not less  
20 than \$2,000,000.00. Any syndicate which has elected and qualified for  
21 S corporation status pursuant to subsection (a) of section 1362 of the  
22 federal Internal Revenue Code of 1986, 26 U.S.C.§1362, need not  
23 maintain the minimum capital and surplus required under the  
24 provisions of this section and the failure of any such syndicate to meet  
25 these minimum requirements shall not render the exchange ineligible  
26 for approval under this section; except that so long as such syndicate  
27 fails to maintain the minimum capital and surplus required under the  
28 provisions of this section, such syndicate shall not transact the  
29 business of insurance in this State and shall not be approved by the  
30 commissioner as an eligible insurer under the provisions of this  
31 section. In the event the insurance exchange does not maintain funds  
32 in an amount acceptable to the commissioner for the protection of all  
33 insurance exchange policyholders, each individual syndicate shall have  
34 capital and surplus, or its equivalent under the laws of its domiciliary  
35 jurisdiction, which is not less than twice the amount of minimum  
36 capital and surplus required for like admitted insurers. No insurance  
37 exchange approved as an eligible insurer by the commissioner shall be  
38 a member of the New Jersey Surplus Lines Insurance Guaranty Fund  
39 created pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.) nor shall  
40 any claim against an exchange be deemed to be a covered claim  
41 pursuant to the provision of that act; and

42 (2) Have caused to be provided to the commissioner a copy of its  
43 current annual statement certified by the insurer, which, relative to the  
44 period reported upon, is no more than 18 months old, and which is  
45 either: (A) filed with and approved by the regulatory authority in the  
46 domicile of the unauthorized insurer; or (B) certified by an accounting

1 or auditing firm licensed in the jurisdiction of the insurer's domicile. In  
2 the case of an insurance exchange, the statement may be an aggregate  
3 combined statement of all underwriting syndicates operating during the  
4 period reported upon;

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

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

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

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

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

36 The commissioner shall [from time to time] annually publish a list  
37 of all currently eligible surplus lines insurers, and shall mail a copy  
38 thereof to each licensed surplus lines agent at his office last of record  
39 with the commissioner.

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



1 Where it appears that any particular insurance risk which is eligible  
2 for export, but insurance coverage thereon, in whole or in part, is not  
3 procurable from the eligible surplus lines insurers, then the surplus  
4 lines agent may file a supplemental affidavit stating such facts and  
5 advising the commissioner that such part of the risk as shall be  
6 unprocurable, as aforesaid, is being placed with named unauthorized  
7 insurers, in the amounts and percentages set forth in the affidavit.  
8 Such named unauthorized insurer shall, however, before accepting any  
9 risk in this State, deposit with the commissioner United States  
10 government bonds in an amount acceptable to the commissioner,  
11 which shall be held by said commissioner for the benefit of New Jersey  
12 policyholders only and the surplus lines agent shall procure from such  
13 unauthorized insurer and file with the commissioner a certified copy  
14 of its current annual statement of financial condition. If such deposit  
15 is made and the statement reveals, including both capital and surplus,  
16 net assets of at least~~[\$500,000.00]~~ \$5,000,000 consisting of at  
17 least~~[\$300,000.00]~~ \$1,500,000 liquid assets, then the surplus lines  
18 agent may proceed to consummate the contract of insurance.  
19 Whenever any insurance risk or any part thereof is placed with an  
20 unauthorized insurer, as provided herein, the policy, binder or cover  
21 note shall bear conspicuously on its face in boldface type the following  
22 notation:

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

35 (cf: P.L.1994, c.50, s.1)

36

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

39 13. Within 30 business days after the effectuation of any surplus  
40 lines insurance the originating broker shall submit to the surplus lines  
41 agent ~~shall file with the commissioner:~~

42 (a) A copy of the cover note, certificate, policy or other  
43 confirmation of insurance showing the identity and location of the  
44 subject of the proposed insurance; name and address of the proposed  
45 insured; name of proposed insurer or insurers; perils to be covered;  
46 form or type of policy of contract under which to be insured; any

1 special or additional coverages or conditions; amount of premium or  
2 rate, and such other pertinent information as the commissioner may  
3 reasonably require; and

4 (b) The affidavits of an affidavit or certification by the broker [and  
5 the surplus lines agent], on [forms as] a form prescribed and furnished  
6 by the commissioner, as to efforts made to place the coverage with  
7 authorized insurers and the results thereof, except that no such  
8 affidavit or certification shall be required for those coverages, risks or  
9 classes of insurance declared eligible for export by the commissioner  
10 pursuant to section 9 of [this act] P.L.1960, c.32 (C.17:22-6.43). The  
11 affidavit or certification shall be maintained in the files of the broker  
12 and the surplus lines agent and shall be available for inspection by the  
13 commissioner for a period of at least five years.

14 [The affidavit of the broker in a surplus lines insurance transaction  
15 shall be filed with the surplus lines agent within 10 days of the  
16 effectuation of any surplus lines insurance placement.] A broker who  
17 fails to [file] submit the affidavit or certification to the surplus lines  
18 agent within the prescribed time is subject to the penalties provided  
19 under section 27 of P.L.1960, c.32 (C. 17:22-6.61).

20 (cf: P.L.1981, c.250, s.3)

21

22 6. Section 23 of P.L.1960, c.32 (C.17:22-6.57) is amended to read  
23 as follows:

24 23. Each surplus lines agent shall keep in his office in this State a  
25 full and true record of each surplus lines contract procured by him,  
26 including a copy of the daily report, if any, and showing such of the  
27 following items as may be applicable:

- 28 (a) Amount of the insurance and perils insured against;  
29 (b) Brief general description of property insured and where  
30 located;  
31 (c) Gross premium charged;  
32 (d) Return premium paid, if any;  
33 (e) Rate of premium charged upon the several items of property;  
34 (f) Effective date of the contract, and the terms thereof;  
35 (g) Name and post-office address of the insured;  
36 (h) Name and home office address of the insurer;  
37 (i) Amount collected from the insured; and  
38 (j) Other information as may be required by the commissioner.

39 The record shall at all times be open to examination by the  
40 commissioner without notice, and shall be so kept available and open  
41 to the commissioner for [3] five years next following expiration or  
42 cancellation of the contract.

43 (cf: P.L.1960, c.32, s.23)

44

45 7. Section 24 of P.L.1960, c.32 (C.17:22-6.58) is amended to read  
46 as follows:

1       24. Each surplus lines agent shall ~~on or before~~ within 45 calendar  
2 days after the end of ~~the month next following~~ each calendar quarter  
3 file with the commissioner a verified report in duplicate of all surplus  
4 lines insurance transacted by him during such calendar quarter.

5       The report shall be on forms as prescribed and furnished by the  
6 commissioner and shall show:

- 7       (a) Gross amount of each kind of insurance transacted;
- 8       (b) Aggregate gross premiums charged;
- 9       (c) Aggregate of returned premiums and taxes paid to insureds;
- 10       (d) Aggregate of net premiums; and
- 11       (e) Additional information as required by the commissioner.

12 (cf: P.L.1960, c.32, s.24)

13  
14       8. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to read  
15 as follows:

16       25. The premiums charged for surplus lines coverages are subject  
17 to a premium receipts tax of 3% of all gross premiums less any return  
18 premiums charged for such insurance. The surplus lines agent shall  
19 collect from the insured , either directly or through the originating  
20 broker, the amount of the tax ~~at the time of the delivery of the cover~~  
21 ~~note, certificate of insurance, policy or other initial confirmation of~~  
22 ~~insurance],~~ in addition to the full amount of the gross premium  
23 charged by the insurer for the insurance; provided, however, that the  
24 tax on any unearned portion of the premium shall be returned to the  
25 policyholder by the surplus lines agent. The surplus lines agent is  
26 prohibited from absorbing such tax, or, as an inducement for insurance  
27 or for any other reason, rebating all or any part of such tax or of his  
28 commission.

29       The surplus lines agent shall forward to the commissioner together  
30 with his quarterly report submitted pursuant to section 24 of P.L.1960,  
31 c.32 (C.17:22-6.58) a check in the amount of the premium receipts tax  
32 due for that period made out to "the State of New Jersey," except that  
33 where the policies cover fire insurance on property in any municipality  
34 or portion of a township, or fire district in this State, which now has  
35 or may hereafter have, a duly incorporated firemen's relief association,  
36 the premium receipts tax covering such insurance shall be paid to the  
37 treasurer of the association.

38       The tax imposed hereunder, if delinquent, shall be subject to the  
39 provisions of R.S.54:49-3 and R.S.54:49-4.

40       The check covering taxes paid under the provisions of this act shall  
41 be forwarded by the commissioner to the Director of the Division of  
42 Taxation and that portion of the premiums representing fire insurance  
43 shall be distributed by him in the amount now or hereafter provided by  
44 law as to taxes collected by him from fire insurance companies of  
45 other ~~States~~ states and foreign countries. The commissioner shall  
46 ascertain and report to the Director of the Division of Taxation all

1 facts necessary to enable the director to ascertain, fix and collect the  
2 amount of the tax to be paid by each licensee subject thereto under this  
3 act.

4 If a surplus lines policy covers risks or exposures only partially in  
5 this State, the tax payable shall be computed on the portion of the  
6 premium which is properly allocable to the risks or exposures located  
7 in this State.

8 This section does not apply as to insurance of or with respect to  
9 insurance of risks of the State Government or its agencies, or of any  
10 county or municipality or of any agency thereof.

11 (cf: P.L.1960, c.32, s.25)

12

13 9. Section 27 of P.L.1960, c.32 (C.17:22-6.61) is amended to read  
14 as follows:

15 27. The commissioner may suspend, revoke, or refuse to renew the  
16 license of a surplus lines agent and all other licenses and permits held  
17 by the licensee under this Title, upon any 1 or more of the following  
18 grounds:

19 (a) Removal of the licensee's office from the State;

20 (b) Removal of the accounts and records of his surplus lines  
21 business from this State during the period when such accounts and  
22 records are required to be maintained under section 23 of **[this act]**  
23 P.L.1960, c.32 (C.17:22-6.57);

24 (c) Closure of the licensee's office for a period of more than 30  
25 consecutive days, unless granted permission by the commissioner upon  
26 showing circumstances warranting such closure for a longer period;

27 (d) Failure to make and file his quarterly reports when due as  
28 required by section 24 of **[this act]** P.L.1960, c.32 (C.17:22-6.58);

29 (e) Failure to pay the tax on surplus lines premiums, as provided  
30 for in this surplus lines law;

31 (f) Failure to maintain the bond as required by section **[22 of this**  
32 **act]** 14 of P.L.1987, c.293 (C.17:22A-14);

33 (g) Suspension, revocation or refusal to renew any other license  
34 issued by the commissioner;

35 (h) Lack of qualifications as for an original surplus lines agent's license;

36 (i) Violation of any provision of this surplus lines law;

37 (j) For any other cause for which a license could be denied,  
38 revoked, suspended or renewal refused under **[R.S.17:22-6.6,**  
39 **17:22-6.16 or 17:22-6.24]** section 17 of P.L.1987, c.293  
40 (C.17:22A-17).

41 In addition to the foregoing penalties set forth in **[paragraph 1 of]**  
42 this section, any person, persons or corporation violating any of the  
43 provisions of this act shall be liable to a penalty not  
44 exceeding**[\$1,000.00]** \$2,500 for the first offense and not  
45 exceeding**[\$2,000.00]** \$5,000 for each succeeding offense to be  
46 recovered in a summary proceeding as provided in **[section]**

1 R.S.17:33-2 of the Revised Statutes].

2 (cf: P.L.1960, c.32, s.27)

3

4 10. Section 29 of P.L.1960, c.32 (C.17:22-6.63) is amended to  
5 read as follows:

6 29. An unauthorized insurer which has not been made eligible as  
7 a surplus lines insurer by the commissioner in accordance with section  
8 11 of P.L.1960, c.32 (C.17:22-6.45) may be sued upon any cause of  
9 action arising in this State under any surplus lines insurance contract  
10 issued by it or certificate, cover note or other confirmation of such  
11 insurance issued by the surplus lines agent, pursuant to the same  
12 procedure as is provided in **the Unauthorized Insurers' Process Act,**  
13 **sections 17:51-1 to 17:51-5 of the Revised Statutes** the Unauthorized  
14 Insurers' Process Act, P.L.1952, c.330 (C.17:51-1 et seq.).

15 Any such policy issued by the insurer, or any certificate of insurance  
16 issued by the surplus lines agent, shall contain a provision stating the  
17 substance of this section and designating the person to whom the  
18 commissioner shall mail process.

19 This section shall be cumulative to any other methods which may  
20 be provided by law for service of process upon the insurer.

21 (cf: P.L.1960, c.32, s.29)

22

23 11. Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to  
24 read as follows:

25 30. Every insured who in this State procures or causes to be  
26 procured or continues or renews insurance with an unauthorized  
27 foreign or alien insurer, or any insured or self-insurer who **[so]**  
28 procures or continues excess loss, catastrophe or other insurance,  
29 upon a subject of insurance resident, located or to be performed within  
30 this State, other than insurance procured through a surplus lines agent  
31 pursuant to the surplus lines law of this State or exempted from tax  
32 under section 25 of **[this act]** P.L.1960, c.32 (C.17:22-6.59), shall  
33 within 30 days after the date such insurance was so procured,  
34 continued, or renewed, file a report of the same with the commissioner  
35 in writing and upon forms designated by the commissioner and  
36 furnished to such an insured upon request. The report shall show the  
37 name and address of the insured or insureds, name and address of the  
38 insurer, the subject of the insurance, a general description of the  
39 coverage, the amount of premium currently charged therefor, and such  
40 additional pertinent information as is reasonably requested by the  
41 commissioner.

42 Any insurance in an unauthorized insurer procured through  
43 negotiations or an application, in whole or in part occurring or made  
44 within or from within this State, or for which premiums in whole or in  
45 part are remitted directly or indirectly from within this State, shall be  
46 deemed to be insurance procured, or continued or renewed in this

1 State within the intent of **[paragraph 1 above]** this section.

2 There is hereby levied upon the obligation, chose in action, or right  
3 represented by the premium charged for such insurance, a tax at the  
4 rate of 3% of the gross amount of such premium less any return  
5 premiums charged for such insurance. Within 30 days after the  
6 insurance was so procured, continued or renewed, and coincidentally  
7 with the filing with the commissioner of the report provided for in  
8 **[paragraph 1 above]** this section, the insured shall pay the amount of  
9 the tax to the commissioner, who, after reviewing the above report,  
10 shall turn over the amount of the tax to the Director of the Division of  
11 Taxation along with a summary of the facts necessary to enable the  
12 director to ascertain and fix the proper amount of the tax.

13 If the insured fails to withhold from the premium the amount of tax  
14 herein levied, the insured shall be liable for the amount thereof and  
15 shall pay the same to the commissioner within the time **[stated in**  
16 **paragraph 2 above]** specified in this section.

17 The tax imposed hereunder if delinquent shall **[bear interest at the**  
18 **rate of 6% per annum, compounded annually]** be subject to the  
19 provisions of R.S.54:49-3 and R.S.54:49-4.

20 The tax shall be collectible from the insured by civil action brought  
21 by the commissioner.

22 The amount of taxes paid to the Director of the Division of  
23 Taxation under the provisions of this section on premiums for fire  
24 insurance shall be distributed by him in the manner now or hereafter  
25 provided by law as to taxes collected by him from fire insurance  
26 companies of other **[States]** states and foreign countries.

27 This section does not abrogate or modify, and shall not be  
28 construed or deemed to abrogate or modify, any provision of section  
29 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding  
30 unauthorized insurer prohibited; section 4 of P.L.1960, c.32  
31 (C.17:22-6.38), penalty for representing unauthorized insurer; or  
32 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized  
33 insurers prohibited; or any other provision of this Title.

34 This section does not apply as to life or disability insurances.  
35 (cf: P.L.1960, c.32, s.30)

36

37 12. Section 2 of P.L.1987, c.293 (C.17:22A-2) is amended to read  
38 as follows:

39 2. As used in this act:

40 a. "Applicant" means a person who has applied for, or who intends  
41 to apply for, a license in accordance with this act.

42 b. "Commissioner" means the Commissioner of Insurance.

43 c. "Days" means calendar days.

44 d. "Department" means the Department of Insurance.

45 e. "Insurance," "insurance policy" or "insurance contract" includes  
46 contracts or policies of life insurance, health insurance, annuities,

- 1 indemnity, property and casualty, fidelity, surety, guaranty and title  
2 insurance.
- 3 f. "Insurance agent" means a person authorized, in writing, by any  
4 insurance company to act as its agent to solicit, negotiate or effect  
5 insurance contracts on its behalf or to collect insurance premiums and  
6 who may be authorized to countersign insurance policies on its behalf.
- 7 g. "Insurance broker" means a person who, for a commission,  
8 brokerage fee, or other consideration, acts or aids in any manner  
9 concerning negotiation, solicitation or effectuation of insurance  
10 contracts as the representative of an insured or prospective insured; or  
11 a person who places insurance in an insurance company that he does  
12 not represent as an agent.
- 13 h. "Insurance consultant" means a person who, for a fee,  
14 commission or other consideration, acts or holds himself out to the  
15 public or any licensee as offering any advice, counsel, opinion or  
16 service with respect to the benefits, advantages or disadvantages under  
17 any insurance policy or contract that is or could be issued in this State,  
18 but shall not include bank trust officers, attorneys-at-law and certified  
19 public accountants who negotiate contracts on behalf of others or  
20 provide general financial counsel if no commission or brokerage fee is  
21 paid for those services.
- 22 i. "Insurance company" includes any company that underwrites or  
23 issues an insurance policy or contract including fraternal benefit  
24 societies as defined in P.L.1959, c.167 (C.17:44A-1 et seq.) and risk  
25 retention groups and purchasing groups as defined in 15 U.S.C.§3901.
- 26 j. "Insurance producer" means any person engaged in the business  
27 of an insurance agent, insurance broker or insurance consultant.
- 28 k. "License" means any license issued pursuant to the provisions of  
29 this act or any act which is superseded by this act.
- 30 l. "Licensee" means any person holding an insurance producer  
31 license issued pursuant to this act.
- 32 m. "Limited insurance representative" means a person who is  
33 authorized to solicit, negotiate or effect contracts for a particular line  
34 of insurance as an agent for an insurance company authorized to write  
35 that line in this State which by the nature of the line of business and  
36 the manner by which it is marketed to the public does not require the  
37 professional competency demanded for an insurance producer license.
- 38 n. "Organization" means any corporation, partnership or other legal entity.
- 39 o. "Person" means any individual, corporation, partnership or other  
40 legal entity.
- 41 p. "State, other than this State," includes any other state, the  
42 District of Columbia, the Commonwealth of Puerto Rico, any territory  
43 of the United States and the Provinces of Canada.
- 44 q. "Bona fide office" means a place where the insurance producer  
45 can be reached in person and by telephone during normal business  
46 hours, which is open to the public so as to provide reasonable access

1 for the transaction of business. A bona fide office is more than a mail  
2 drop, a summer home that is unattended during a substantial portion  
3 of the year, or an answering service unrelated to a place where  
4 business is conducted.

5 (cf: P.L.1987, c.293, s.2)

6

7 13. (New section) No surplus lines agent shall charge any fee to  
8 an originating broker in connection with the negotiation or  
9 procurement of any contract of surplus lines insurance that shall  
10 exceed \$50 plus the actual costs incurred for any services performed  
11 by a firm or person that is not associated with the surplus lines agent,  
12 such as inspection services.

13

14 14. Section 3 of P.L.1952, c.330 (C.17:51-3) is amended to read  
15 as follows:

16 3. The provisions of this act shall not apply to any action or  
17 proceeding against any unauthorized insurer arising out of a contract  
18 of

19 (a) Reinsurance effectuated in accordance with the laws of New  
20 Jersey;

21 (b) Insurance [effectuated in accordance with chapter four hundred  
22 sixty-two of the laws of one thousand nine hundred and forty-eight]  
23 placed with an unauthorized insurer made eligible for surplus lines by  
24 the commissioner pursuant to section 11 of P.L.1960, c.32  
25 (C.17:22-6.45);

26 (c) Aircraft insurance;

27 (d) Insurance on property or operations of railroads engaged in  
28 interstate commerce;

29 (e) Insurance against legal liability arising out of the ownership,  
30 operation or maintenance of any property having a permanent situs  
31 outside of this State; or

32 (f) Insurance against loss of or damage to any property having a  
33 permanent situs outside this State; where such contract contains a  
34 provision designating the commissioner of insurance to be its true and  
35 lawful attorney upon whom may be served all lawful process in any  
36 action or proceeding instituted by or on behalf of an insured or  
37 beneficiary arising out of any such contract or where the insurer enters  
38 a general appearance in any such action or proceeding.

39 (cf: P.L.1953, c.17, s.192)

40

41 15. Section 17 of P.L.1960, c.32 (C.17:22-6.51) is repealed.

42

43 16. This act shall take effect immediately.



## STATEMENT

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This bill modifies "the surplus lines law" by: increasing required capital and surplus requirements for eligible surplus lines insurers; increasing the amount of United States trust funds required of alien insurers (those domiciled in other countries) for eligibility; authorizing the Commissioner of Insurance to recognize the financial quality of reinsurance maintained by alien insurers when those alien insurers are on the approved list of the National Association of Insurance Commissioners (NAIC); and eliminating certain regulatory restrictions that currently impede access to the surplus lines market.

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16 Makes revisions to the "surplus lines law."

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2

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*SPONSOR'S* STATEMENT

7

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16 that currently impede access to the surplus lines market.

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# ASSEMBLY INSURANCE COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 1572

# STATE OF NEW JERSEY

DATED: MARCH 4, 1996

The Assembly Insurance Committee reports favorably Assembly Bill No. 1572.

This bill modifies "the surplus lines law" by: increasing required capital and surplus requirements for eligible surplus lines insurers; increasing the amount of United States trust funds required of alien insurers (those domiciled in other countries) for eligibility; authorizing the Commissioner of Insurance to recognize the financial quality of reinsurance maintained by alien insurers when those alien insurers are on the approved list of the National Association of Insurance Commissioners (NAIC); and eliminating certain regulatory restrictions that currently impede access to the surplus lines market.

This bill increases the amount of trust funds required to be maintained in the United States by an alien insurer for the protection of its policyholders in the United States from \$1.5 million to \$2.5 million and, in addition, allows the commissioner to require an alien insurer to deposit securities in New Jersey in an amount deemed appropriate by the commissioner as a condition of maintaining its eligibility status in New Jersey. This increase in the trust fund amount conforms with the current requirements of the NAIC. The bill increases the required capital and surplus requirements for eligible surplus lines insurers to the NAIC's current minimum of \$15 million. This minimum capital and surplus requirement is phased in over three-year period for current eligible surplus lines insurers. The bill also increases the minimum amounts of net assets and liquid assets required for ineligible surplus lines insurers (insurers with which risks may be placed when coverage is not available from eligible surplus lines insurers) from \$500,000 and \$300,000 to \$5 million and \$1.5 million, respectively.

When an insurance risk is placed with an ineligible surplus lines insurer, the bill requires that the insured be notified that insurance placed with that ineligible surplus lines insurer is not covered by the New Jersey Property-Liability Insurance Guaranty Association or the New Jersey Surplus Lines Insurance Guaranty Fund, which only apply to insurance placed with admitted insurers or eligible surplus lines insurers.

The bill allows eligible alien surplus lines insurers to take credit for

their reinsurance if they are listed by the International Insurers Department (IID) of the NAIC, and provide annually to the commissioner the insurer's current NAIC filing concerning their ceded reinsurance and such other information concerning ceded reinsurance that the IID or the commissioner may require.

The bill eliminates the following requirements: that the commissioner approve an agency agreement under which a surplus lines insurer confers binding authority on a surplus lines agent and that any agreement between a surplus lines agent delegating his binding authority to any other agent be approved by the commissioner.

Current law provides that the full amount of insurance must not be procurable to be eligible for export and then only that amount in excess of the amount procurable may be exported. This bill provides that any unprocurable coverage may be exported along with any associated commercial general liability and commercial property coverages whether procurable or not. Current law also provides that the premium rate at which the coverage is exported cannot be lower than the lowest rate which has been filed by or on behalf of any authorized insurer. The bill adds a provision to provide that any reduction in coverage or limits as compared to policies filed by authorized insurers may be exported at a commensurate reduction in premium rate. Current law further provides that the policy form under which insurance is exported may not provide coverage different from similar policies on file and in actual use in the State by a majority of the authorized insurers. The bill requires that a surplus lines insurance policy provide coverage under substantially the same terms and conditions as similar policies on file and in current use in the admitted market for the same lines of insurance. However, a surplus lines agent may file a policy form which deviates from forms approved in the admitted market if the modification: (1) is reasonable giving consideration to past and prospective loss experience of the risk or risks to be insured and the modification facilitates the availability of coverage for such risk or risks which coverage would otherwise not be available at a reasonable cost; or (2) renders the form unique and designed for use with respect to a particular subject of insurance. Any such policy form must be filed, at least 30 days before it is used, with the commissioner, together with a statement of the deviation. If the form does not meet the criteria for such deviation, the commissioner may order the form be disapproved or withdrawn.

The current law requires both the surplus lines agent and the broker to file affidavits with the commissioner concerning efforts to place coverage with authorized insurers. Because the broker is the party who actually makes the effort to place coverage with authorized insurers, the bill requires him to continue to execute the affidavit (or certification) concerning the effort, but the document is to be submitted to the surplus lines agent and maintained in both the broker's and agent's files, available for inspection by the commissioner for five years.

The bill reflects the current practice of surplus lines premium taxes being collected initially from the insured by the originating broker, who in turn remits those taxes to the surplus lines agent, who then forwards those taxes to the commissioner.

The bill provides that the late filing and late payment of the taxes on the premiums for surplus lines coverages are subject to the interest and penalties for such violations under the State Tax Uniform Procedure Law. In addition, the maximum penalties for violations of "the surplus lines law" are increased from \$1,000 to \$2,500 for a first offense and from \$2,000 to \$5,000 for each succeeding offense.

Under current law surplus lines agents and limited insurance representatives must have a bona fide office. This bill defines "bona fide office."

The bill limits the fees that may be charged by surplus lines agents to an originating broker in connection with a contract of surplus lines insurance. Such fees may not exceed \$50 and the costs incurred for services performed by an unrelated firm or person, such as inspection services.

Under the bill, the commissioner becomes the irrevocable agent to receive service of process on behalf of a surplus lines insurer.

The definition of "certificate of insurance" is modified to recognize the current practice by surplus lines insurers and agents of issuing renewal certificates as evidence of continued coverage under a surplus lines insurance policy if there is no change in the terms or amounts of the coverage.

The bill amends "the surplus lines law" and the Unauthorized Insurers' Process Act to clarify that eligible surplus lines insurers are not subject to the provisions of the Unauthorized Insurers' Process Act. The provisions of "the surplus lines law" currently referenced in the exemption section of the Unauthorized Insurers' Process Act were repealed in a prior revision of "the surplus lines law." This change makes clear that eligible surplus lines insurers are not required to deposit cash, securities or a bond with the clerk of a court pursuant to section 2 of P.L.1952, c.330 (C.17:51-2) when sued in this State as a precondition to filing any pleading or other papers in an action.

Finally, the bill repeals section 17 of P.L.1960, c.32 (C.17:22-6.51) which concerns the filing of surplus lines policies with the commissioner and is no longer necessary because of other provisions in the bill.

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## OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

TRENTON, NJ 08625

CONTACT: Becky Taylor  
(609)777-2600

RELEASE: Mon., July 15, 1996

Gov. Christie Whitman has signed legislation that amends current law to enhance the penalties for acts of animal cruelty.

Under current law, acts of animal cruelty are punishable as disorderly persons offenses, which carry a maximum fine of \$1,000 and a maximum jail term of up to 6 months. The new law increases the penalties to include a minimum fine of \$250 for each offense, and mandatory community service for 30 days. It also provides the court with the discretion of imposing a restitution fine on violators.

**S-661/A-370** was sponsored by Senator Andrew Ciesla (R-Monmouth/Ocean) and Assemblyman James Holzapfel (R-Monmouth/Ocean),

Gov. Whitman has also signed the following legislation:

**A-1572/ S-755**, sponsored by Assemblyman Gerald Zecker (R-Essex/Passaic) and Senator Gerald Cardinale (R-Bergen), revises current law regarding "surplus lines" insurance regulations to strike a balance between consumer protection and regulatory streamlining. The surplus lines insurance market is a safety valve for businesses that cannot obtain needed insurance coverage.

**S-1010/ A-1401**, sponsored by Senator Robert Martin (R-Essex/Morris/Passaic) and Assemblymen Wilfredo Caraballo (D-Essex) and David Russo (R-Bergen/Passaic), requires that the Division of Family Development, of the Department of Human Services, pay the fees for