

17: 22-6.45

LEGISLATIVE HISTORY CHECKLIST
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(Surplus line insurers--
S corporations)

NJSA: 17:22-6.45

LAWS OF: 1994 **CHAPTER:** 50

BILL NO: A519

SPONSOR(S): Zecker and Gaffney

DATE INTRODUCED: Pre-file

COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** February 17, 1994
SENATE: May 12, 1994

DATE OF APPROVAL: June 23, 1994

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:

REPORTS: No

HEARINGS: No

KBG:pp

1 AN ACT concerning the qualifications of certain insurance
2 exchanges as surplus lines insurers and amending P.L.1980, c.32.

3

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

6 1. Section 11 of P.L.1980, c.32 (C.17:22-8.45) is amended to
7 read as follows:

8 11. No surplus lines agent shall place any coverage with any
9 unauthorized insurer which is not then an eligible surplus lines
10 insurer as provided for under this section. No unauthorized
11 insurer shall be or become an eligible surplus lines insurer unless
12 made eligible by the commissioner in accordance with the
13 following conditions:

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

16 (b) The insurer must be currently an authorized insurer in the
17 state or country of its domicile as to the kind or kinds of
18 insurance proposed to be so placed, and must have been such an
19 insurer for not less than one full year preceding; or must be the
20 subsidiary of an admitted insurer or of an already eligible surplus
21 lines insurer that has been so admitted or eligible for a period of
22 not less than one full year preceding;

23 (c) Before granting eligibility the requesting surplus lines
24 agent or the insurer shall furnish the commissioner with duly
25 authenticated copies of its current annual financial statement,
26 one in the language and monetary values of the country of the
27 insurer, and the other in the English language and with all
28 monetary values therein expressed in United States dollars, at the
29 current exchange rate shown in the statement, and with such
30 additional information relative to the insurer as the commissioner
31 may require;

32 (d) The insurer shall establish satisfactory evidence of
33 financial integrity, and:

34 (1) Have capital and surplus, or its equivalent under the laws
35 of its domiciliary jurisdiction, which is not less than twice the
36 amount of minimum capital and surplus required for like admitted
37 insurers. In addition, an alien insurer shall maintain in the United
38 States an irrevocable trust fund in a state or federally chartered
39 bank in an amount not less than \$1,500,000.00 for the protection
40 of all of its policyholders in the United States. The trust fund
41 shall consist of cash, securities, letters of credit, or of
42 investments of substantially the same character and quality

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 as those which are eligible investments for the capital and
2 statutory reserves of admitted insurers authorized to write like
3 kinds of insurance in this State. The trust fund shall not be
4 included in any calculation of capital and surplus or its equivalent
5 and shall have an expiration date which at no time shall be less
6 than five years. In lieu of the above capital and surplus
7 requirements, and trust fund amount, any Lloyd's or other similar
8 group of alien insurers, which group includes unincorporated
9 individual insurers shall maintain a trust fund of not less than
10 \$50,000,000.00 as security to the full amount thereof for all
11 policyholders and creditors in the United States of each member
12 of the group, and the trust shall likewise comply with the terms
13 and conditions hereinabove set forth. Any insurance exchange
14 created by the laws of an individual state may be approved by the
15 commissioner as an eligible insurer under the provisions of this
16 section, and shall maintain capital and surplus, or the substantial
17 equivalent thereof, of not less than \$35,000,000.00 in the
18 aggregate. For insurance exchanges which maintain funds in an
19 amount acceptable to the commissioner for the protection of all
20 insurance exchange policyholders, each individual syndicate,
21 except those syndicates which have elected and qualify for S
22 corporation status pursuant to subsection (a) of section 1362 of
23 the federal Internal Revenue Code of 1986, 26 U.S.C. §1362, shall
24 maintain minimum capital and surplus, or the substantial
25 equivalent thereof, of not less than \$2,000,000.00. Any syndicate
26 which has elected and qualified for S corporation status pursuant
27 to subsection (a) of section 1362 of the federal Internal Revenue
28 Code of 1986, 26 U.S.C. §1362, need not maintain the minimum
29 capital and surplus required under the provisions of this section
30 and the failure of any such syndicate to meet these minimum
31 requirements shall not render the exchange ineligible for approval
32 under this section; except that so long as such syndicate fails to
33 maintain the minimum capital and surplus required under the
34 provisions of this section, such syndicate shall not transact the
35 business of insurance in this State and shall not be approved by
36 the commissioner as an eligible insurer under the provisions of
37 this section. In the event the insurance exchange does not
38 maintain funds in an amount acceptable to the commissioner for
39 the protection of all insurance exchange policyholders, each
40 individual syndicate shall have capital and surplus, or its
41 equivalent under the laws of its domiciliary jurisdiction, which is
42 not less than twice the amount of minimum capital and surplus
43 required for like admitted insurers. No insurance exchange
44 approved as an eligible insurer by the commissioner shall be a
45 member of the New Jersey Surplus Lines Insurance Guaranty
46 Fund created pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.)
47 nor shall any claim against an exchange be deemed to be a
48 covered claim pursuant to the provision of that act and

49 (2) Have caused to be provided to the commissioner a copy of
50 its current annual statement certified by the insurer, which,
51 relative to the period reported upon, is no more than 18 months
52 old, and which is either: (A) filed with and approved by the
53 regulatory authority in the domicile of the unauthorized insurer;
54 or (B) certified by an accounting or auditing firm licensed in the

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

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

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

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

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

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

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

42 Where it appears that any particular insurance risk which is
43 eligible for export, but insurance coverage thereon, in whole or in
44 part, is not procurable from the eligible surplus lines insurers,
45 then the surplus lines agent may file a supplemental affidavit
46 stating such facts and advising the commissioner that such part
47 of the risk as shall be unprocurable, as aforesaid, is being placed
48 with named unauthorized insurers, in the amounts and
49 percentages set forth in the affidavit. Such named unauthorized
50 insurer shall, however, before accepting any risk in this State,
51 deposit with the commissioner United States government bonds in
52 an amount acceptable to the commissioner, which shall be held by
53 said commissioner for the benefit of New Jersey policyholders
54 only and the surplus lines agent shall procure from such

1 unauthorized insurer and file with the commissioner a certified
2 copy of its current annual statement of financial condition. If
3 such deposit is made and the statement reveals, including both
4 capital and surplus, net assets of at least \$500,000.00 consisting
5 of at least \$300,000.00 liquid assets, then the surplus lines agent
6 may proceed to consummate the contract of insurance.
7 Whenever any insurance risk or any part thereof is placed with an
8 unauthorized insurer, as provided herein, the policy, binder or
9 cover note shall bear conspicuously on its face in boldface type
10 the following notation: "All or some of the insurers participating
11 in this risk have not been admitted to transact business in the
12 State of New Jersey, nor have they been approved as a surplus
13 lines insurer by the insurance commissioner of this State. The
14 placing of such insurance by a duly licensed surplus lines agent in
15 this State shall not be construed as approval of such insurer by
16 the insurance commissioner of the State of New Jersey." All
17 other provisions of this Title shall apply to such placement the
18 same as if such risks were placed with an eligible surplus lines
19 insurer.

20 (cf: P.L.1993, c.243, s.4)

21 2. This act shall take effect immediately.

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26 Changes qualifications of surplus lines insurers that are insurance
27 exchanges with syndicates that are S corporations.

1 insurer shall, however, before accepting any risk in this State,
2 deposit with the commissioner United States government bonds in
3 an amount acceptable to the commissioner, which shall be held by
4 said commissioner for the benefit of New Jersey policyholders
5 only and the surplus lines agent shall procure from such
6 unauthorized insurer and file with the commissioner a certified
7 copy of its current annual statement of financial condition. If
8 such deposit is made and the statement reveals, including both
9 capital and surplus, net assets of at least \$500,000.00 consisting
10 of at least \$300,000.00 liquid assets, then the surplus lines agent
11 may proceed to consummate the contract of insurance.
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13 unauthorized insurer, as provided herein, the policy, binder or
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15 the following notation: "All or some of the insurers participating
16 in this risk have not been admitted to transact business in the
17 State of New Jersey, nor have they been approved as a surplus
18 lines insurer by the insurance commissioner of this State. The
19 placing of such insurance by a duly licensed surplus lines agent in
20 this State shall not be construed as approval of such insurer by
21 the insurance commissioner of the State of New Jersey." All
22 other provisions of this Title shall apply to such placement the
23 same as if such risks were placed with an eligible surplus lines
24 insurer.

25 (cf: P.L.1987, c.407, s.1)

26 2. This act shall take effect immediately.

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29 STATEMENT

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31 This bill provides that an insurance exchange would be eligible
32 for approval as a surplus lines insurer under the law if one or
33 more of its syndicates are qualified S corporations which do not
34 maintain the capital and surplus required under the law, except
35 that those S corporation syndicates would be ineligible to
36 transact insurance business in this State.

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41 Changes qualifications of surplus lines insurers that are insurance
42 exchanges with syndicates that are S corporations.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 519

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 1994

The Assembly Insurance Committee reports favorably Assembly, No. 519.

This bill provides that an insurance exchange would be eligible for approval as a surplus lines insurer under the law if one or more of its syndicates are qualified S corporations which do not maintain the capital and surplus required under the law, except that those S corporation syndicates would be ineligible to transact insurance business in this State.

This bill was pre-filed for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 519

STATE OF NEW JERSEY

DATED: MARCH 10, 1994

The Senate Commerce Committee reports favorably Assembly Bill No. 519.

This bill provides that an insurance exchange which meets the other requirements of "the surplus lines law" would be eligible for approval as a surplus lines insurer under that law if one or more of its syndicates are qualified S corporations which do not maintain a minimum capital and surplus of not less than \$2,000,000 required under that law, except that those S corporation syndicates would be ineligible to transact insurance business in this State and could not be approved by the Commissioner of Insurance as an eligible surplus lines insurer.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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Release: IMMEDIATE
JUNE 24, 1994

Gov. Christie Whitman yesterday signed legislation to permit municipalities to impose an additional assessment upon certain businesses to assist in tourism promotion.

The bill, S-277, was sponsored by Sen. Andrew Ciesla, R-Monmouth. The Assembly version, A-850, was sponsored by Assemblywoman Virginia Haines and Assemblyman David Wolfe, both R-Ocean.

Existing law permits municipalities to impose a \$50 assessment on licensed businesses and the bill signed yesterday increases the permissible limit to \$200. Licensed enterprises subject to the assessment include liquor distributors, amusement game operators, hotel and motel owners, theater owners and used car dealers.

The legislation requires that half of the funds raised by the additional assessment be used for tourism advertising in the region. Currently, five municipalities impose the assessment.

Other bills signed by the Governor yesterday include:

A-226, sponsored by Assemblymen Wayne Bryant, D-Camden, and Paul Kramer, R-Mercer, and S-337, sponsored by Sen. Donald DiFrancesco, R-Union, to extend immunity from liability to public employees.

A-519, sponsored by Assemblymen Gerald Zecker, R-Passaic, and John Gaffney, R-Atlantic, and Sen. Gerald Cardinale, R-Bergen, to allow insurance exchanges whose member syndicates include Subchapter S corporations to become surplus lines insurers in New Jersey.