

17B:18-67

**LEGISLATIVE HISTORY CHECKLIST**  
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(Insurance companies--Life, Health  
Annuities--increase capital &  
surplus requirements)

**NJSA:** 17B:18-67

**LAWS OF:** 1993 **CHAPTER:** 235

**BILL NO:** A76

**SPONSOR(S)** Kramer and others

**DATE INTRODUCED:** February 1, 1993

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

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
First reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** May 13, 1993  
**SENATE:** June 28, 1993

**DATE OF APPROVAL:** August 9, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

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

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

See newspaper clippings--attached:  
"Governor signs stricter scrutiny for insurance companies in state,"  
8-10-93 Star Ledger.

KBG:pp

[FIRST REPRINT]  
ASSEMBLY, No. 76

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1993

By Assemblymen KRAMER, AUGUSTINE, Zecker,  
DiGaetano, Penn, Assemblywoman Wright,  
Assemblyman Gibson, Assemblywoman Haines,  
Assemblyman Geist, Assemblywoman Heck,  
Assemblymen Kavanaugh, Felice and Wolfe

1 AN ACT concerning the capital and surplus requirements of  
2 certain insurers and revising parts of the statutory law.

3

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

6 1. (New section) Sections 2 through 6 of this act shall be  
7 known and may be cited as the "Dynamic Capital and Surplus Act  
8 of <sup>1</sup>[1992] 1993<sup>1</sup>."

9 2. (New section) Except as provided by section 3 of this act,  
10 no domestic insurer shall commence business or continue to  
11 transact business in this State unless the insurer has surplus and  
12 capital in cash and short term assets of at least the following  
13 amounts:

14 a. For either kind or both kinds of business specified in  
15 N.J.S.17B:17-3 and N.J.S.17B:17-5, \$1,000,000 in capital and  
16 \$4,000,000 in surplus for a stock insurer, and \$4,000,000 in surplus  
17 for a mutual insurer;

18 b. For the kind of business specified in N.J.S.17B:17-4,  
19 \$700,000 in capital and \$2,800,000 in surplus for a stock insurer,  
20 and \$3,000,000 in surplus for a mutual insurer; and

21 c. For all three kinds of business specified in N.J.S.17B:17-3,  
22 N.J.S.17B:17-4 and N.J.S.17B:17-5, \$1,530,000 in capital and  
23 \$6,120,000 in surplus for a stock insurer, and \$6,300,000 in surplus  
24 for a mutual insurer.

25 For purposes of this section, "surplus" means unencumbered  
26 assets in excess of all required reserves and other liabilities; and  
27 "short term assets" means notes, bonds, certificates of deposit,  
28 Treasury bills, commercial paper, money market instruments,  
29 repurchase agreements, collateral and mortgage loans and other  
30 obligations whose maturities, or repurchase dates on repurchase  
31 agreements, at the time of acquisition, were one year or less.

32 3. (New section) An insurer authorized to transact the kind of  
33 business specified in N.J.S.17B:17-3 <sup>1</sup>, N.J.S.17B:17-4 or  
34 N.J.S.17B:17-5<sup>1</sup> prior to and on the effective date of this act  
35 may apply to the commissioner for a temporary waiver of the  
36 applicable capital and surplus requirements set forth in section 2  
37 of this act. The commissioner may, in his discretion, temporarily  
38 waive the applicable capital and surplus requirements for that  
39 insurer for a period of no more than five years, except that the  
40 insurer shall remain subject to capital and surplus requirements

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AIN committee amendments adopted March 29, 1993.

1 of no less amounts than those in effect immediately prior to the  
2 effective date of this act. In considering such a temporary  
3 waiver, the commissioner shall consider: the size of the insurer's  
4 deficiency in meeting the applicable capital and surplus  
5 requirements; the adequacy of the insurer's financial plan to  
6 meet the applicable capital and surplus requirements; and any  
7 other factors deemed appropriate by the commissioner.

8 4. (New section) The commissioner may increase the amount  
9 of capital or surplus required of any insurer pursuant to section 2  
10 of this act, or subsequently revise or redetermine that increase,  
11 using appropriate methods and procedures established by rules  
12 and regulations adopted by him in order to provide adequate  
13 protection against risks affecting the insurer's financial  
14 condition that are not adequately or fully covered by its reserves  
15 or other assets, but under no circumstance shall an insurer's  
16 capital or surplus be less than the capital or surplus required  
17 pursuant to section 2 or, where applicable, section 3 of this act;  
18 provided, however, that any increase of capital or surplus  
19 pursuant to this section, including any increase required by a  
20 subsequent revision or redetermination, shall be made only after  
21 a formal departmental hearing, on a record, unless that hearing is  
22 waived by the affected insurer. All matters pertaining to a  
23 hearing or to an increase of capital or surplus pursuant to this  
24 section shall be confidential and not subject to subpoena or public  
25 inspection, except to the extent that the commissioner finds  
26 release of information necessary to protect the public. The  
27 hearing shall be initiated within 20 days after written notice to  
28 the insurer. Any decision regarding an increase of capital or  
29 surplus pursuant to this section, including an increase required by  
30 a subsequent revision or redetermination, shall contain findings  
31 specifying the factors deemed significant in regard to the  
32 particular insurer, and shall set forth the reasons supporting the  
33 increase of capital or surplus ordered by the commissioner. In  
34 determining any increase, revision or redetermination in the  
35 amount of capital or surplus, the commissioner shall consider the  
36 risks of:

37 a. Increases or decreases in the frequency and severity of  
38 losses under normal operating conditions, as well as increases or  
39 decreases in those values, beyond or below the levels  
40 contemplated by the rates that it charged for insurance and  
41 beyond or below those reasonably expected under normal  
42 conditions;

43 b. Increases or decreases in expenses under normal operating  
44 conditions, as well as increases or decreases in those values,  
45 beyond or below the levels contemplated by the rates that it  
46 charged for insurance and beyond or below those reasonably  
47 expected under normal conditions;

48 c. Increases or decreases in the value of, or return on, invested  
49 assets under normal operating conditions, as well as increases or  
50 decreases in those values, beyond or below those levels  
51 anticipated under normal conditions;

52 d. Changes in economic, social and market conditions that  
53 could adversely or favorably affect the financial condition of the  
54 insurer, including conditions that would make liquidity more or

1 less important than contemplated and would prevent or facilitate  
2 timely investments or force or prohibit untimely sales of assets;  
3 and

4 e. Any other contingencies, including reinsurance and unfunded  
5 or extracontractual obligations, which may affect the insurer's  
6 financial condition.

7 5. (New section) In determining any increase, revision or  
8 redetermination in the capital or surplus of an insurer pursuant to  
9 the provisions of section 4 of this act, the commissioner shall  
10 take into account the following factors:

11 a. Methods and techniques used to measure risk exposure and  
12 variability;

13 b. The information available relating to the magnitude of the  
14 various risks described in section 4 of this act;

15 c. The extent to which the risks described in section 4 of this  
16 act are independent or interrelated, and whether any dependency  
17 is direct or inverse;

18 d. The insurer's financial history, projections of profits or  
19 losses and other operational characteristics;

20 e. The extent to which the insurer has provided protection  
21 against contingencies in ways other than the establishment of  
22 surplus, including, but not limited to: redundancy of premiums;  
23 margin in reserves and liabilities; adjustability of contracts  
24 pursuant to the terms of the contracts; voluntary or mandatory  
25 investment valuation reserves; reinsurance; the use of  
26 conservative actuarial assumptions to provide a margin of  
27 security; reserve adjustments after rate increases for policies  
28 written at earlier and less adequate rates; contingency or  
29 catastrophe reserves, and diversification of assets and  
30 underwriting risks; and

31 f. Any other relevant factors, including National Association  
32 of Insurance Commissioners' reports and independent judgments  
33 of the soundness of the insurer's financial condition, as evidenced  
34 by ratings and reports of reliable professional financial services.

35 6. (New section) The commissioner may suspend or revoke the  
36 authority to do business in this State of any insurer that does not  
37 comply with the provisions of this act.

38 7. N.J.S.17B:23-1 is amended to read as follows:

39 17B:23-1. Any foreign insurer which by its charter or by the  
40 laws of the state in which it was incorporated, or any alien  
41 insurer which under the laws of the country or other jurisdiction  
42 in which it is organized, is authorized to write life insurance,  
43 annuities or health insurance or a combination thereof, may, if it  
44 meets the financial requirements of a similar domestic insurer  
45 set forth in sections [17B:18-35 and 17B:18-36] 2 through 4 of  
46 P.L. , c. (C. )(now pending before the Legislature as this  
47 bill), be admitted or continue to transact such authorized business  
48 in this State; provided that if an insurer is otherwise qualified  
49 therefor, the commissioner shall continue to so authorize any  
50 insurer which immediately prior to the effective date of this  
51 Code was lawfully authorized to write in this state a kind or kinds  
52 of insurance in addition to life insurance, annuities and health  
53 insurance.

54 (cf: N.J.S.17B:23-1)

1 8. (New section) Notwithstanding the provisions of section 5  
2 of P.L.1988, c.71 (C.17:48E-17.1) or any other provision of law to  
3 the contrary, on or after December 31, 1996 or the date on which  
4 the commissioner deems that health service corporations have  
5 met the purpose of section 5 of P.L.1988, c.71 (C.17:48E-17.1) on  
6 its group and other activities, excluding individual business,  
7 whichever date is earlier, no health service corporation shall  
8 commence or continue to transact group business or other  
9 activities, excluding individual business, in this State unless its  
10 special contingent surplus for its group and other activities,  
11 excluding contingent surplus for individual contracts, meets the  
12 financial requirements set forth in sections 2 through 4 of  
13 P.L. , c. (C. ) (now pending before the Legislature as  
14 this bill). For purposes of this section, "special contingent  
15 surplus" shall have the same meaning as surplus in applying the  
16 requirements set forth in sections 2 through 4 of P.L. , c.  
17 (C. ).

18 9. N.J.S.17B:18-9, N.J.S.17B:18-35 and N.J.S.17B:18-36 are  
19 repealed.

20 10. This act shall take effect immediately.

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25 \_\_\_\_\_  
26 Increases the capital and surplus requirements for life and health  
insurers.

1 8. (New section) Notwithstanding the provisions of section 5  
2 of P.L.1988, c.71 (C.17:48E-17.1) or any other provision of law to  
3 the contrary, on or after December 31, 1996 or the date on which  
4 the commissioner deems that health service corporations have  
5 met the purpose of section 5 of P.L.1988, c.71 (C.17:48E-17.1) on  
6 its group and other activities, excluding individual business,  
7 whichever date is earlier, no health service corporation shall  
8 commence or continue to transact group business or other  
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10 special contingent surplus for its group and other activities,  
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12 financial requirements set forth in sections 2 through 4 of  
13 P.L. , c. (C. ) (now pending before the Legislature as  
14 this bill). For purposes of this section, "special contingent  
15 surplus" shall have the same meaning as surplus in applying the  
16 requirements set forth in sections 2 through 4 of P.L. , c.  
17 (C. ).

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19 repealed.

20 10. This act shall take effect immediately.

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#### STATEMENT

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25 This bill increases the minimum capital and surplus  
26 requirements for insurers doing life, health or annuity business in  
27 this State and authorizes the Commissioner of Insurance to adjust  
28 the amount of capital or surplus required for any such insurer  
29 according to the nature and severity of the risks assumed by the  
30 insurer. If an insurer fails to meet these capital or surplus  
31 requirements, the Commissioner of Insurance may suspend or  
32 revoke the insurer's authority to do business in this State.

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37 \_\_\_\_\_  
38 Increases the capital and surplus requirements for life and health  
insurers.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 76**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably and with committee amendments, Assembly, No. 76.

This bill increases the minimum capital and surplus requirements for insurers doing life, health or annuity business in this State and authorizes the Commissioner of Insurance to adjust the amount of capital or surplus required for any such insurer according to the nature and severity of the risks assumed by the insurer. If an insurer fails to meet these capital or surplus requirements, the Commissioner of Insurance may suspend or revoke the insurer's authority to do business in this State.

The amendments clarify that insurers transacting health and annuity business may request a temporary waiver of the increased capital and surplus requirements as insurers transacting life business may currently do.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 76

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly, No. 76 (1R).

This bill increases the minimum capital and surplus requirements for insurers doing life, health or annuity business in this State and authorizes the Commissioner of Insurance to adjust the amount of capital or surplus required for any such insurer according to the nature and severity of the risks assumed by the insurer. If an insurer fails to meet these capital or surplus requirements, the Commissioner of Insurance may suspend or revoke the insurer's authority to do business in this State.



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# OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

CONTACT: Jon Shure  
(609) 777-2600

Peter Cammarano  
(609) 633-3955

## GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

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