

# 17:22-6.42

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 179  
**NJSA:** 17:22-6.42            (Deregulates policy forms used by surplus line insurers)  
**BILL NO:** A2964                (Substituted for S1991)

**SPONSOR(S):** Cohen and Impreveduto

**DATE INTRODUCED:** November 7, 2002

**COMMITTEE:**            **ASSEMBLY:** Banking and Insurance

**SENATE:** ----

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**            **ASSEMBLY:** May 22, 2003

**SENATE:** June 30, 2003

**DATE OF APPROVAL:** September 12, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

#### A2964

[SPONSORS STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

#### S1991

[SPONSORS STATEMENT](#): (Begins on page 5 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A2964

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

### FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 633-2111 or <mailto:refdesk@njstatelib.org>.

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

P.L. 2003, CHAPTER 179, *approved September 12, 2003*  
Assembly, No. 2964

1 **AN ACT** concerning the regulation of surplus lines policies and  
2 amending P.L.1960, c.32.

3

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

6

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

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

14 (a) The insurance must be eligible for export under section 9 of  
15 P.L.1960, c.32 (C.17:22-6.43);

16 (b) The insurer must be an eligible surplus lines insurer under  
17 section 11 of P.L.1960, c.32 (C.17:22-6.45);

18 (c) The insurance must be so placed through a licensed New Jersey  
19 surplus lines agent; and

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

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

**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 risk;

2 (5) If the binding authority is delegable by the agent, a prohibition  
3 against the delegation without the prior written approval of the  
4 insurer.

5 If an agent who is qualified in accordance with this section to  
6 exercise binding authority on behalf of an insurer delegates the binding  
7 authority to any other agent, the agent to whom the authority is  
8 delegated shall not exercise the same until a copy of the instrument  
9 delegating the binding authority shall first have been filed with the  
10 commissioner for informational purposes and not for the purpose of  
11 approval or disapproval. The instrument delegating the binding  
12 authority shall include an identification of the binding authority  
13 agreement between the delegating agent and the insurer.

14 (f) Forms used by eligible surplus lines insurers pursuant to P.L.  
15 1960, c.32 (C. 17:22-6.40 et seq.) shall not be subject to the insurance  
16 laws and regulations of this State except to the extent that P.L. 1960,  
17 c.32 (C. 17:22-6.40 et seq.) regulates those forms. For purposes of  
18 this subsection, "eligible surplus lines insurers" include eligible surplus  
19 lines insurers and unauthorized insurers, which pursuant to section 11  
20 of P.L.1960, c.32 (C. 17:22-6.45), are insuring risks which are eligible  
21 for export but insurance coverage thereon, in whole or in part, is not  
22 procurable from eligible surplus lines insurers.

23 (cf: P.L.2001, c.210, s.23)

24

25 2. Section 9 of P.L.1960, c. 32 (C.17:22-6.43) is amended to read  
26 as follows:

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

29 (a) The insurance coverage required must not be procurable, after  
30 a diligent effort has been made to do so, from among the insurers  
31 authorized to transact that kind and class of insurance in this State,  
32 and the insurance coverage exported shall be only that coverage not  
33 so procurable from authorized insurers, provided, however, that  
34 associated commercial general liability and commercial property  
35 coverages may be exported along with such unprocurable coverage;  
36 and

37 (b) The premium rate at which the coverage is exported shall not  
38 be lower than the lowest rate which has been filed by or on behalf of  
39 any authorized insurer, provided, however, that any reduction in  
40 coverage or limits as compared to policies filed by authorized insurers  
41 may be exported at a commensurate reduction in premium rate[; and]

42 .

43 (c) [The policy form or contract under which the insurance is  
44 written shall provide coverage under substantially the same terms and  
45 conditions as that provided in policy forms or contracts which are  
46 currently approved by the commissioner for use in the admitted market

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

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

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

41 (cf: P.L.1996, c.69, s.3)

42

43 3. This act shall take effect immediately.

## 1 STATEMENT

2

3 This bill provides that policy forms used by surplus lines insurers  
4 will no longer be regulated by the Department of Banking and  
5 Insurance. Under current law, surplus lines policies must provide  
6 coverage under substantially the same terms and conditions as that  
7 provided in policy forms which are currently approved by the  
8 Commissioner of Banking and Insurance for use in the admitted  
9 market. Surplus lines insurers provide insurance coverage which is not  
10 available in the admitted market in this State. It is necessary to  
11 deregulate policy forms in the surplus lines market to increase the  
12 amounts of surplus lines insurance available in this State.

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16

17 Deregulates policy forms used by surplus lines insurers.

# ASSEMBLY, No. 2964

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED NOVEMBER 7, 2002

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman ANTHONY IMPREVEDUTO**

**District 32 (Bergen and Hudson)**

**Co-Sponsored by:**

**Senator Cardinale**

**SYNOPSIS**

Deregulates policy forms used by surplus lines insurers.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 7/1/2003)**

A2964 COHEN, IMPREVEDUTO

2

1 AN ACT concerning the regulation of surplus lines policies and  
2 amending P.L.1960, c.32.

3

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

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

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

14 (a) The insurance must be eligible for export under section 9 of  
15 P.L.1960, c.32 (C.17:22-6.43);

16 (b) The insurer must be an eligible surplus lines insurer under  
17 section 11 of P.L.1960, c.32 (C.17:22-6.45);

18 (c) The insurance must be so placed through a licensed New Jersey  
19 surplus lines agent; and

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

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

**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 against the delegation without the prior written approval of the  
2 insurer.

3 If an agent who is qualified in accordance with this section to  
4 exercise binding authority on behalf of an insurer delegates the binding  
5 authority to any other agent, the agent to whom the authority is  
6 delegated shall not exercise the same until a copy of the instrument  
7 delegating the binding authority shall first have been filed with the  
8 commissioner for informational purposes and not for the purpose of  
9 approval or disapproval. The instrument delegating the binding  
10 authority shall include an identification of the binding authority  
11 agreement between the delegating agent and the insurer.

12 (f) Forms used by eligible surplus lines insurers pursuant to P.L.  
13 1960, c.32 (C. 17:22-6.40 et seq.) shall not be subject to the insurance  
14 laws and regulations of this State except to the extent that P.L. 1960,  
15 c.32 (C. 17:22-6.40 et seq.) regulates those forms. For purposes of  
16 this subsection, "eligible surplus lines insurers" include eligible surplus  
17 lines insurers and unauthorized insurers, which pursuant to section 11  
18 of P.L.1960, c.32 (C. 17:22-6.45), are insuring risks which are eligible  
19 for export but insurance coverage thereon, in whole or in part, is not  
20 procurable from eligible surplus lines insurers.

21 (cf: P.L.2001, c.210, s.23)

22

23 2. Section 9 of P.L.1960, c. 32 (C.17:22-6.43) is amended to read  
24 as follows:

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

27 (a) The insurance coverage required must not be procurable, after  
28 a diligent effort has been made to do so, from among the insurers  
29 authorized to transact that kind and class of insurance in this State,  
30 and the insurance coverage exported shall be only that coverage not  
31 so procurable from authorized insurers, provided, however, that  
32 associated commercial general liability and commercial property  
33 coverages may be exported along with such unprocurable coverage;  
34 and

35 (b) The premium rate at which the coverage is exported shall not  
36 be lower than the lowest rate which has been filed by or on behalf of  
37 any authorized insurer, provided, however, that any reduction in  
38 coverage or limits as compared to policies filed by authorized insurers  
39 may be exported at a commensurate reduction in premium rate[; and]

40 .

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

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

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

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23 eligible for export generally and notwithstanding the provisions of  
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25 insurance coverage or risk for which he finds, after a hearing, which  
26 he shall hold annually or more often, of which notice thereof was given  
27 to each insurer authorized to transact such class or classes in this  
28 State, that there is no reasonable or adequate market among  
29 authorized insurers. The notice of such hearing shall [also identify any  
30 type of policy form or contract which deviates from the standard form  
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35 such rules and regulations shall continue in effect during the existence  
36 of the conditions upon which predicated, but subject to earlier  
37 termination by the commissioner. The commissioner shall notify all  
38 surplus lines agents of such termination.

39 (cf: P.L.1996, c.69, s.3)

40

41 3. This act shall take effect immediately.

42

43

44

#### STATEMENT

45

46 This bill provides that policy forms used by surplus lines insurers

1 will no longer be regulated by the Department of Banking and  
2 Insurance. Under current law, surplus lines policies must provide  
3 coverage under substantially the same terms and conditions as that  
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6 market. Surplus lines insurers provide insurance coverage which is not  
7 available in the admitted market in this State. It is necessary to  
8 deregulate policy forms in the surplus lines market to increase the  
9 amounts of surplus lines insurance available in this State.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2964**

**STATE OF NEW JERSEY**

DATED: JANUARY 9, 2003

The Assembly Banking and Insurance Committee reports favorably  
Assembly Bill No. 2964.

This bill provides for the deregulation of policy forms used by  
eligible surplus lines insurers pursuant to the provisions of "the surplus  
lines law."

**SENATE, No. 1991**

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

INTRODUCED OCTOBER 24, 2002

**Sponsored by:**  
**Senator GERALD CARDINALE**  
**District 39 (Bergen)**

**SYNOPSIS**

Deregulates policy forms used by surplus lines insurers.

**CURRENT VERSION OF TEXT**

As introduced.



S1991 CARDINALE

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2 insurer.

3 If an agent who is qualified in accordance with this section to  
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44 for the same line or lines of insurance. Notwithstanding the foregoing,  
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2 following criteria: (1) the modification is reasonable giving  
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36 termination by the commissioner. The commissioner shall notify all  
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38 (cf: P.L.1996, c.69, s.3)

39

40 3. This act shall take effect immediately.



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STATEMENT

This bill provides that policy forms used by surplus lines insurers will no longer be regulated by the Department of Banking and Insurance. Under current law, surplus lines policies must provide coverage under substantially the same terms and conditions as that provided in policy forms which are currently approved by the Commissioner of Banking and Insurance for use in the admitted market. Surplus lines insurers provide insurance coverage which is not available in the admitted market in this State. It is necessary to deregulate policy forms in the surplus lines market to increase the amounts of surplus lines insurance available in this State.

SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 1991**

**STATE OF NEW JERSEY**

DATED: MAY 15, 2003

The Senate Commerce Committee reports favorably Senate Bill No. 1991.

This bill provides for the deregulation of policy forms used by eligible surplus lines insurers pursuant to the provisions of "the surplus lines law." Under current law, surplus lines policies must provide coverage under substantially the same terms and conditions as that provided in policy forms which are currently approved by the Commissioner of Banking and Insurance for use in the admitted market.