

CHAPTER 179

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

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

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

C17:22-6.42 Procurement of surplus line coverages; conditions.

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

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

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

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

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

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

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

The agreement shall include the following items:

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

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

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

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

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

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

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

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

C.17:22-6.43 Eligibility for export of insurance coverage; conditions.

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

(a) The insurance coverage required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact that kind and class of insurance in this State, and the insurance coverage exported shall be only that coverage not so procurable from authorized insurers, provided, however, that associated commercial general liability and

commercial property coverages may be exported along with such unprocurable coverage; and

(b) The premium rate at which the coverage is exported shall not be lower than the lowest rate which has been filed by or on behalf of any authorized insurer, provided, however, 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.

(c) (Deleted by amendment, P.L.2003, c.179.)

Except, that the commissioner shall by rules and regulations declare eligible for export generally and notwithstanding the provisions of subsections (a) and (b) above, any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this State, that there is no reasonable or adequate market among authorized insurers. The notice of such hearing shall provide interested parties with the opportunity to present relevant information at the hearing for the commissioner's consideration. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner. The commissioner shall notify all surplus lines agents of such termination.

3. This act shall take effect immediately.

Approved September 12, 2003.