

CHAPTER 75

AN ACT concerning the taxation of certain lines of insurance, dedicating certain additional revenues to the Health Care Subsidy Fund, amending P.L.1945, c.132, P.L.1960, c.32 and P.L.1984, c.101, supplementing P.L.1992, c.160 (C.26:2H-18.51 et al.) , and making an appropriation.

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

1. Section 2 of P.L.1945, c.132 (C.54:18A-2) is amended to read as follows:

C.54:18A-2 Amount of tax, additional tax.

2. (a) The tax specified in subsection (a) of section 1 of this act, except as to life insurance companies and except as to marine insurance as described by chapter 16 of Title 54 of the Revised Statutes, shall, except as hereinafter provided, be 2% upon the taxable premiums collected by such company during the year ending December 31 next preceding on all business of the company in this State, less the amount of taxes on its property, exclusive of taxes on real estate and of taxes payable pursuant to this section, paid in this State by the company pursuant to any law of this State during the said year. Any taxes paid to the treasurer of any firemen's relief association of this State pursuant to R.S.54:18-1 shall be considered a part of the tax payable under this act. An additional tax of 0.1% upon such taxable premiums of such insurers shall also be paid, which amount shall be dedicated to the Department of Banking and Insurance for payment of administrative costs related to its statutory duties.

(b) Taxable premiums, collected after December 31, 1965 by an insurance company subject to the provisions of subsection (a) hereof under group accident and health insurance policies on residents of this State, and taxable premiums collected under legal insurance policies as defined in section 3 of P.L.1981, c.160 (C.17:46C-3) on residents of this State, shall be subject to tax at the following rates:

As to taxes payable in 1967	1 3/4 %
As to taxes payable in 1968	1 1/2 %
As to taxes payable in 1969	1 1/4 %
As to taxes payable in 1970 through 2008	1%
As to taxes payable in 2009	1.35%
As to taxes payable in 2010 and thereafter	1%

An additional tax of 0.05% upon such taxable premiums of such insurers shall also be paid, which amount shall be dedicated to the Department of Banking and Insurance for payment of administrative costs related to its statutory duties.

2. Section 3 of P.L.1945, c.132 (C.54:18A-3) is amended to read as follows:

C.54:18A-3 Amount of tax, life insurance companies; additional tax.

3. Amount of tax, life insurance companies; additional tax. (a) The tax specified in subsection (a) of section 1 of this act as to life insurance companies, shall, except as hereinafter provided, be 2% upon the taxable premiums collected by the company during the year ending December 31 next preceding under all policies or contracts of insurance on residents of this State, less the amount of taxes on its property, exclusive of taxes on real estate and of taxes payable pursuant to this section, paid in this State by the company pursuant to any law of this State during the said year. An additional tax of 0.1% upon such

taxable premiums of such insurers shall also be paid, which amount shall be dedicated to the Department of Banking and Insurance for payment of administrative costs related to its statutory duties.

(b) Taxable premiums, collected after December 31, 1965 by an insurance company subject to the provisions of subsection (a) hereof under group accident and health insurance policies on residents of this State, and taxable premiums collected under legal insurance policies as defined in section 3 of P.L.1981, c.160 (C.17:46C-3) on residents of this State, shall be subject to tax at the following rates:

As to taxes payable in 1967	1 3/4%
As to taxes payable in 1968	1 1/2%
As to taxes payable in 1969	1 1/4%
As to taxes payable in 1970 through 2008	1%
As to taxes payable in 2009	1.35%
As to taxes payable in 2010 and thereafter	1%

An additional tax of 0.05% upon such taxable premiums of such insurers shall also be paid, which amount shall be dedicated to the Department of Banking and Insurance for payment of administrative costs related to its statutory duties.

3. Section 16 of P.L.1945, c.132 (C.54:18A-9) is amended to read as follows:

C.54:18A-9 Inapplicability to fraternal beneficiary society, certain insurance companies.

16. a. This act shall not apply to any fraternal beneficiary society. For the purposes of this act, "insurance company" shall include a corporation, and any person, partnership or unincorporated association required as an insurer to procure from the Commissioner of Banking and Insurance the certificate prescribed by section 1 of an act entitled "An act to regulate the transaction of the business of insurance by individuals, partnerships and unincorporated associations in this State" approved July 11, 1939 (P.L.1939, c.188; C.17:49-1), or under any other statute now in force or hereafter enacted, engaging in any kind or kinds of business specified in R.S.17:17-1, subject to the insurance laws of this State; provided, however, that no company or society, which by its act or certificate of incorporation has for its object the assistance of sick, needy or disabled members, the defraying of funeral expenses of deceased members and the provision for the wants of the surviving spouses and families of members after death, shall be deemed an insurance company within the purview of this act.

b. (1) For the purposes of P.L.1945, c.132 (C.54:18A-1 et al.), "insurance company" shall include, beginning January 1, 1992, a health service corporation established pursuant to the provisions of P.L.1985, c.236 (C.17:48E-1 et al.), with respect to its experience rated health insurance. An "insurance company" shall also include any life, accident, or health insurance company in which a health service corporation owns stock, controls, or otherwise becomes affiliated with, as provided in subsection e. of section 3 of P.L.1985, c.236 (C.17:48E-3).

(2) For the purposes of P.L.1945, c.132 (C.54:18A-1 et al.), "insurance company" shall include, beginning January 1, 2005, a health service corporation established pursuant to the provisions of P.L.1985, c.236 (C.17:48E-1 et al.), with respect to its experience rated and community rated health insurance. An "insurance company" shall also include any life, accident, or health insurance company in which a health service corporation owns stock, controls, or otherwise becomes affiliated with, as provided in subsection e. of section 3 of P.L.1985, c.236 (C.17:48E-3).

(3) For the purposes of P.L.1945, c.132 (C.54:18A-1 et al.), "insurance company" shall include, beginning January 1, 2009 through December 31, 2009, a dental service corporation established pursuant to the provisions of P.L.1968, c.305 (C.17:48C-1 et seq.), notwithstanding the provisions of section 32 of P.L.1968, c.305 (C.17:48C-32) and any other law to the contrary, and provided that notwithstanding section 1 of P.L.1945, c.132 (C.54:18A-1) as to the payment of tax, tax liability due on a dental service corporation's business done during that calendar year shall be paid on March 1, 2010, with the filing of a return in a manner as shall be specified by the Director of the Division of Taxation and the Commissioner of Banking and Insurance.

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

C.17:22-6.59 Premium receipts tax for surplus lines coverage.

25. The premiums charged for surplus lines coverages are subject to a premium receipts tax of 5% of all gross premiums less any return premiums charged for such insurance. The surplus lines agent shall collect from the insured, either directly or through the originating broker, the amount of the tax, in addition to the full amount of the gross premium charged by the insurer for the insurance; provided, however, that the tax on any unearned portion of the premium shall be returned to the policyholder by the surplus lines agent. The surplus lines agent is prohibited from absorbing such tax, or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his commission.

The surplus lines agent shall forward to the commissioner together with his quarterly report submitted pursuant to section 24 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the premium receipts tax due for that period made out to "the State of New Jersey," except that where the policies cover fire insurance on property in any municipality or portion of a township, or fire district in this State, which now has or may hereafter have, a duly incorporated firemen's relief association, 3% of the premium receipts tax covering such insurance shall be paid to the treasurer of the New Jersey State Firemen's Association and the remaining 2% of the premium receipts tax shall be forwarded to the commissioner.

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

The check covering taxes paid under the provisions of this act shall be forwarded by the commissioner to the Director of the Division of Taxation and that portion of the premiums representing fire insurance shall be distributed by him in the amount now or hereafter provided by law as to taxes collected by him from fire insurance companies of other states and foreign countries. The commissioner shall ascertain and report to the Director of the Division of Taxation all facts necessary to enable the director to ascertain, fix and collect the amount of the tax to be paid by each licensee subject thereto under this act.

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

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

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

C.17:22-6.64 Report of insurance through unauthorized foreign, alien insurer.

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

Any insurance in an unauthorized insurer procured through negotiations or an application, in whole or in part occurring or made within or from within this State, or for which premiums in whole or in part are remitted directly or indirectly from within this State, shall be deemed to be insurance procured, or continued or renewed in this State within the intent of this section.

There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a tax at the rate of 5% of the gross amount of such premium less any return premiums charged for such insurance. Within 30 days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in this section, the insured shall pay the amount of the tax to the commissioner, who, after reviewing the above report, shall turn over the amount of the tax to the Director of the Division of Taxation along with a summary of the facts necessary to enable the director to ascertain and fix the proper amount of the tax, except that where the policies cover fire insurance on property in any municipality or portion of a township, or fire district in this State, which now has or may hereafter have, a duly incorporated firemen's relief association, 3% of the premium receipts tax covering such insurance shall be paid to the treasurer of the New Jersey State Firemen's Association and the remaining 2% of the premium receipts tax shall be forwarded to the commissioner.

If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time specified in this section.

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

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

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

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

This section does not apply as to life or disability insurances.

6. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to read as follows:

C.17:22-6.74 Powers, duties and obligations of the Surplus Lines Insurance Guaranty Fund.

5. a. The fund shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred prior to or 30 days after the determination of insolvency, or before the policy expiration date, if less than 30 days after that determination, or before the policyholder replaces the policy or causes its cancellation, if he does so within 30 days of the determination. The fund's obligation for covered claims shall not be greater than \$300,000.00 per occurrence, subject to any applicable deductible and self-insured retention contained in the policy. The commissioner may pay a portion of or defer the fund's obligations for covered claims based on the moneys available in the fund. In no event shall the fund be obligated to a policyholder or claimant in excess of the limits of liability of the insolvent insurer stated in the policy from which the claim arises. Any obligation of the fund to defend an insured shall cease upon the fund's payment or tender of an amount equal to the lesser of the fund's covered claim statutory limit or the applicable policy limit;

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Assess member insurers in accordance with section 6 of this act in amounts necessary to pay:

(a) Obligations of the fund under paragraph (1) of this subsection,

(b) Expenses of handling covered claims,

(c) Any other expenses incurred in the implementation of the provisions of this act;

(4) Investigate claims brought against the fund; and adjust, compromise, settle, and pay covered claims to the extent of the fund's obligation; and deny all other claims; and may review settlements, releases and judgments to which the insolvent insurer or its policyholders were parties to determine the extent to which the settlements, releases and judgments may be properly contested;

(5) Notify those persons as the commissioner directs under section 8 of this act;

(6) Handle claims through the association's employees or representatives, or through one or more insurers or other persons designated as servicing facilities;

(7) Pay the other expenses of the association in administering the provisions of this act; and

(8) (Deleted by amendment, P.L.2004, c.165.)

(9) Within 60 days of the enactment of P.L.2009, c.75 (C.26:2H-18.58i et al.), transfer to the Health Care Subsidy Fund \$60,000,000 as provided by section 8 of that act.

b. The fund may:

(1) Sue or be sued;

(2) Negotiate and become a party to those contracts which are necessary to carry out the purpose of this act;

(3) Perform those other acts which are necessary or appropriate to effectuate the purpose of this act;

(4) (Deleted by amendment, P.L.2002, c.30.)

(5) With the approval of the commissioner, borrow and separately account for moneys from any source, including but not limited to the New Jersey Property-Liability Insurance Guaranty Association and the Unsatisfied Claim and Judgment Fund, in such amounts and on such terms as the New Jersey Property-Liability Insurance Guaranty Association may determine are necessary or appropriate to effectuate the purposes of P.L.2003, c.89 (C.17:30A-2.1 et al.) in accordance with the association's plan of operation; and

(6) Make loans, in such amounts and on such terms as the association may determine are necessary or appropriate, to the New Jersey Property-Liability Insurance Guaranty Association in accordance with the provisions of the "New Jersey Property-Liability Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et seq.) and the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.).

C.26:2H-18.58i Deposits into Health Care Subsidy Fund from revenue collected from taxation of certain insurance policies.

7. During the fiscal year beginning on July 1, 2009, there shall be deposited in the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58): the sum of \$19.5 million from the revenue collected from the taxation of group accident and health insurance policies pursuant to subsection (b) of section 2 of P.L.1945, c.132 (C.54:18A-2) and subsection (b) of section 3 of P.L.1945, c.132 (C.54:18A-3).

8. Within 60 days of the effective date of P.L.2009, c.75 (C.26:2H-18.58i et al.), there shall be deposited in the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58) the sum of \$60,000,000 from the New Jersey Surplus Lines Insurance Guaranty Fund pursuant to paragraph (9) of subsection a. of section 5 of P.L.1984, c.101 (C.17:22-6.74).

9. During the State fiscal year commencing July 1, 2009, if the Commissioner of Banking and Insurance, in consultation with the State Treasurer, determines that the balance remaining in the New Jersey Surplus Lines Insurance Guaranty Fund is insufficient to satisfy existing covered claims after the transfer of \$60,000,000 to the Health Care Subsidy Fund pursuant to section 8 of P.L.2009, c.75, there is appropriated from the General Fund to the New Jersey Surplus Lines Insurance Guaranty Fund an amount not to exceed \$27,000,000, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

10. This act shall take effect immediately.

Approved June 29, 2009.