

## CHAPTER 39

**AN ACT** concerning reinsurance and surplus lines requirements, supplementing and amending P.L.1960, c.32 (C.17:22-6.40 et seq.) and amending P.L.1993, c.243.

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

C.17:22-6.69a Short title.

1. Sections 1, 2 and 3 of this amendatory and supplementary act shall be known and may be cited as the “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

C.17:22-6.69b Designation as domestic surplus lines insurer.

2. a. Notwithstanding any other provision of law to the contrary, a domestic insurer possessing policyholder surplus of at least \$15,000,000 may, pursuant to a resolution by its board of directors, and upon the written approval of the Commissioner of Banking and Insurance, be designated as a domestic surplus lines insurer. A domestic surplus lines insurer shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage.

b. A domestic surplus lines insurer shall only insure in this State a New Jersey risk procured from a surplus lines agent in accordance with the provisions of “the surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.).

c. A domestic surplus lines insurer shall not issue policies of private passenger automobile insurance, workers’ compensation or workers’ occupational disease insurance.

d. Insurance written by a domestic surplus lines insurer shall be subject to the tax on premiums provided by section 25 of P.L.1960, c.32 (C.17:22-6.59).

C.17:22-6.69c Notice to policyholder.

3. Whenever any insurance risk or any part thereof is placed with a domestic surplus lines insurer, the policy, binder, or cover note shall bear conspicuously on its face in boldface, the following notation:

“Notice to policyholder: This policy is written by a domestic surplus lines insurer, an eligible unauthorized insurer pursuant to section 2 of P.L.2011, c.39 (C.17:22-6.69b), and is not subject to the rate or form filing or approval requirements of the New Jersey Department of Banking and Insurance. This policy may contain conditions, limitations, exclusions and different terms than a policy otherwise issued by a New Jersey authorized or admitted insurer. This policy is not covered by the New Jersey Property-Liability Guaranty Association. This policy may be covered by the New Jersey Surplus Lines Insurance Guaranty Fund, but only to the extent provided pursuant to section 2 of P.L.1984, c.101 (C.17:22-6.71).”

4. Section 2 of P.L.1993, c.243 (C.17:51B-2) is amended to read as follows:

C.17:51B-2 Credit for reinsurance ceded by certain insurers.

2. Credit for reinsurance ceded by an insurer which is domiciled in New Jersey, or which is either licensed in New Jersey or eligible to write surplus lines insurance in New Jersey and which in either case is domiciled in a state or country which does not employ standards regarding credit for reinsurance substantially similar, as determined by the commissioner, to those applicable under this act, shall be allowed as either an asset or a deduction from liability only when:

a. The reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State; or

b. The reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this State. An accredited reinsurer is one which:

(1) Files with the commissioner evidence of its submission to this State's jurisdiction;

(2) Submits to this State's authority to examine its books and records;

(3) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an assuming alien insurer, is entered through, and licensed to transact insurance or reinsurance in, at least one state;

(4) Files annually with the commissioner a copy of its annual statement filed with the insurance department or other regulatory authority of its state of domicile and a copy of its most recent audited financial statement; and either:

(a) Maintains a surplus in regard to policyholders in an amount which is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within 120 days of its submission therefor; or

(b) Maintains a surplus in regard to policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner;

(5) Submits a filing fee in an amount established by the commissioner; and

(6) Provides any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfies such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State.

No credit shall be allowed a ceding licensed insurer or unauthorized eligible surplus lines insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing; or

c. The reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an assuming alien insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this act, as determined by the commissioner, and that assuming insurer or United States branch of an assuming alien insurer:

(1) Maintains a surplus in regard to policyholders in an amount of not less than \$20,000,000;

(2) Submits to the authority of this State to examine its books and records; and

(3) Provides any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfies such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State; except that the requirement of paragraph (1) of this subsection shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; or

d. The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In

addition to the requirements of this subsection, the assuming insurer shall provide any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfy such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State.

(1) In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

(2) In the case of a group of insurers, which group includes individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter for the fiscal period immediately preceding, which shall not be less than one year, by the group's domiciliary regulator and its independent certified public accountant.

(3) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in this section, has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, submits to this State's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of not less than \$10,000,000,000: the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus a joint trusteed surplus of which not less than \$100,000,000 shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities; and each member of the group shall make available to the commissioner an annual certification of the member's solvency for the fiscal period immediately preceding, which shall not be less than one year, by the member's domiciliary regulator and its independent certified public accountant.

Any trust established pursuant to this subsection shall be in a form approved by the commissioner, and the content, location, legal currency and financial institutions shall be acceptable to the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

e. The commissioner may, in his discretion, allow credit for reinsurance if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection a., b., c. or d. of this section but only with respect to the insurance of risks located in jurisdictions

where such reinsurance is required or provided by applicable law or regulation of that jurisdiction; or

f. The commissioner may, in his discretion, allow credit for reinsurance if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection a., b., c. or d. of this section but only if the assuming insurer holds surplus or equivalent in excess of \$250,000,000. In determining whether credit should be allowed, the commissioner shall consider the following: (1) that the reinsurer has a secure financial strength rating from at least two nationally recognized statistical rating organizations deemed acceptable by the commissioner; (2) the domiciliary regulatory jurisdiction of the assuming insurer; (3) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer; (4) the substance of financial and operating standards for reinsurers in the domiciliary jurisdiction; (5) the form and substance of financial reports required to be filed by the reinsurer in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles; (6) the domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner, in particular; (7) the history of performance by reinsurers in the domiciliary jurisdiction; (8) the reinsurer's or an affiliate's use of in-State professional service providers related or unrelated to the reinsurance, including, but not limited to, attorneys, accountants, managers, actuaries, brokers or intermediaries; (9) any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction; and (10) any other matters deemed relevant by the commissioner. The commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The commissioner may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under subsection d. of this section.

The provisions of this subsection shall apply only to reinsurance contracts entered into or renewed on or after the effective date of P.L.2011, c.39, except that the provisions applicable to life reinsurance contracts shall not become effective until the earlier of 24 months from the effective date of P.L.2011, c.39, or the implementation of principles-based standards of life insurance reserving by the National Association of Insurance Commissioners.

g. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by subsections c. and d. of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements: (1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or any appellate court in the event of an appeal; and (2) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

5. Section 11 of P.L.1960, c.32 (C.17:22-6.45) is amended to read as follows:

C.17:22-6.45 Eligibility as surplus lines insurer.

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

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

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than one full year preceding; or must be the subsidiary of an admitted insurer or of an already eligible surplus lines insurer that has been so admitted or eligible for a period of not less than one full year preceding or must be a domestic surplus lines insurer as provided by section 2 of P.L.2011, c.39 (C.17:22-6.69b);

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

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

(1) Have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers or \$15,000,000, whichever is greater; except that unauthorized insurers already eligible under this act shall have at least \$10,000,000 by December 31, 1996; at least \$12,500,000 by December 31, 1997; and \$15,000,000 by December 31, 1998. In addition, an alien insurer shall maintain in the United States, as the sole security requirement to qualify for eligibility in this State, an irrevocable trust fund in a state or federally chartered bank in an amount not less than \$2,500,000 for the protection of all of its policyholders in the United States; provided, however, that an alien insurer eligible for surplus lines may be required to deposit securities in New Jersey in an amount deemed appropriate by the commissioner as a condition of maintaining its eligibility status. The trust fund shall consist of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. The trust fund shall not be included in any calculation of capital and surplus or its equivalent and shall have an expiration date which at no time shall be less than five years. In lieu of the above capital and surplus requirements, and trust fund amount, any Lloyd's or other similar group of alien insurers, which group includes unincorporated individual insurers shall maintain a trust fund of not less than \$50,000,000.00 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions hereinabove set forth. The credit for reinsurance requirements of sections 2 and 3 of P.L.1993, c.243 (C.17:51B-2 and 17:51B-3) shall not apply to an eligible alien surplus lines insurer that appears on the quarterly listing prepared by the International Insurers Department (IID) of the National Association of Insurance Commissioners and that provides the commissioner annually with a copy of such insurer's current Schedule R filing and such other information concerning ceded reinsurance that the International Insurers Department or the commissioner may from time to time require. Any insurance exchange created by the laws of an individual state may be approved by the commissioner as an eligible insurer under the provisions of this

section, and shall maintain capital and surplus, or the substantial equivalent thereof, of not less than \$35,000,000.00 in the aggregate. For insurance exchanges which maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate, except those syndicates which have elected and qualify for S corporation status pursuant to subsection (a) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1362, shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than \$2,000,000.00. Any syndicate which has elected and qualified for S corporation status pursuant to subsection (a) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1362, need not maintain the minimum capital and surplus required under the provisions of this section and the failure of any such syndicate to meet these minimum requirements shall not render the exchange ineligible for approval under this section; except that so long as such syndicate fails to maintain the minimum capital and surplus required under the provisions of this section, such syndicate shall not transact the business of insurance in this State and shall not be approved by the commissioner as an eligible insurer under the provisions of this section. In the event the insurance exchange does not maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate shall have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers. No insurance exchange approved as an eligible insurer by the commissioner shall be a member of the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to P.L.1984, c.101 (C.17:22-6.70 et seq.) nor shall any claim against an exchange be deemed to be a covered claim pursuant to the provision of that act; and

(2) Have caused to be provided to the commissioner a copy of its current annual statement certified by the insurer, which, relative to the period reported upon, is no more than 18 months old, and which is either: (A) filed with and approved by the regulatory authority in the domicile of the unauthorized insurer; or (B) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon;

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

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

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

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

(i) The insurer shall constitute, by a duly executed instrument filed with the department, the commissioner and his successor in office its true and lawful attorney, upon whom all original process in any action or legal proceeding against it may be served, and therein agree that any original process against it which may be served upon the commissioner shall be of the same force and validity as if served on the insurer, and that the authority thereof shall continue in force irrevocable so long as any liability of the insurer remains outstanding in this State.

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

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

Where it appears that any particular insurance risk which is eligible for export, but insurance coverage thereon, in whole or in part, is not procurable from the eligible surplus lines insurers, then the surplus lines agent may file a supplemental affidavit stating such facts and advising the commissioner that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the affidavit. Such named unauthorized insurer shall, however, before accepting any risk in this State, deposit with the commissioner United States government bonds in an amount acceptable to the commissioner, which shall be held by said commissioner for the benefit of New Jersey policyholders only and the surplus lines agent shall procure from such unauthorized insurer and file with the commissioner a certified copy of its current annual statement of financial condition. If such deposit is made and the statement reveals, including both capital and surplus, net assets of at least \$5,000,000 consisting of at least \$1,500,000 liquid assets, then the surplus lines agent may proceed to consummate the contract of insurance. Whenever any insurance risk or any part thereof is placed with an unauthorized insurer, as provided herein, the policy, binder or cover note shall bear conspicuously on its face in boldface type the following notation:

"All or some of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the insurance commissioner of this State. The placing of such insurance by a duly licensed surplus lines agent in this State shall not be construed as approval of such insurer by the insurance commissioner of the State of New Jersey. Such insurance is not covered by the New Jersey Property-Liability Insurance Guaranty Association or the New Jersey Surplus Lines Insurance Guaranty Fund." All other provisions of this Title, except the provisions of P.L.1984, c.101 (C.17:22-6.70 et seq.), shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

6. This act shall take effect on the 90th day after enactment but the commissioner may take such anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved March 22, 2011.