

CHAPTER 119

AN ACT concerning certain taxes on surplus lines insurance and amending and supplementing P.L.1960, c.32.

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

1. Section 7 of P.L.1960, c.32 (C.17:22-6.41) is amended to read as follows:

C.17:22-6.41 Definitions relative to surplus lines insurers.

7. As used in this surplus lines law:

(a) "Surplus lines agent" means an individual licensed as a surplus lines insurance producer with surplus lines authority as provided in P.L.2001, c.210 (C.17:22A-26 et seq.) to handle the placement of insurance coverages on behalf of unauthorized insurers.

(b) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this surplus lines law.

(c) To "export" means to place in an unauthorized insurer under this surplus lines law, insurance covering a subject of insurance resident, located, or to be performed in New Jersey.

(d) "Commissioner" means the Commissioner of Banking and Insurance of the State of New Jersey.

(e) "Certificate of insurance" means permanent evidence of insurance on a form approved by the commissioner and issued by a surplus lines agent who has filed evidence of his binding authority with the commissioner on behalf of an alien insurer. When issued other than on behalf of an alien insurer, an initial certificate of insurance will be treated as temporary evidence of insurance, pending the issuance of a policy. "Certificate of insurance" also means evidence of a renewal of that insurance provided: (1) there is no change in the terms or amounts of coverage; (2) the coverage is still eligible for export; and (3) the insured may request the issuance of a new policy.

(f) "Cover note," "binder" or "confirmation of insurance," means temporary evidence of insurance, to be replaced by a policy or certificate of insurance.

(g) "Home state" means,

(1) Except as provided in paragraph (2) of this subsection, the term "home state" means, with respect to an insured:

(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the state referred to in subparagraph (i) of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subparagraph (i) of paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract.

2. 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 in this State and other states, where this State is the home state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant to this section shall be based on the total United States premium for the applicable policy.

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.

3. 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.

If a surplus lines policy covers risks or exposures in this State and other states, where this State is the home state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant to this section shall be based on the total United States premium for the applicable policy.

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.

C.17:22-6.69d Authority of commissioner to enter into compacts, agreements.

4. a. Notwithstanding the provisions of section 24, 25 or 30 of P.L.1960, c.32 (C.17:22-6.58, C.17:22-6.59 or C.17:22-6.64) or any other law to the contrary, the commissioner is authorized, subject to the provisions of section 6 of P.L.2011, c.119 (C.17:22-6.69f), to enter into, modify and to terminate this State's participation in one or more compacts or agreements that establish procedures for the reporting, payment, collection and allocation, among the other states participating in those compacts or agreements, of the premium taxes for multi-state risks paid to this State as the home state pursuant to section 25 or 30 of P.L.1960, c.32 (C.17:22-6.59 and C.17:22-6.64) or paid to any other state as home state as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41) on a risk which is resident or located in this State. The compacts or agreements may address any matters necessary to facilitate the

reporting, payment, collection and allocation of premium taxes on multi-state risks, including, but not limited to:

- (1) A method and formula for that allocation;
- (2) Establishment of uniform requirements, forms and procedures that facilitate the reporting, payment, collection and allocation of premium taxes on multi-state risks;
- (3) Establishment of a clearinghouse to facilitate the receipt and distribution of premium taxes and transaction data related to multi-state risks; and
- (4) The authority to collect and distribute taxes based on a single home state rate as well as the rates of other states.

b. In determining whether to enter into one or more compacts or agreements, the commissioner shall consider:

- (1) The efficiencies to be achieved in the reporting, payment, collection and allocation of premium taxes on surplus lines insurance;
- (2) The amount of revenue to be generated through participation in any such compacts or agreements. The commissioner may consult with the State Treasurer in making this determination; and
- (3) Any other material factor relevant to the reporting, payment, collection and allocation of premium taxes on surplus lines insurance.

C.17:22-6.69e Authority of commissioner to modify, terminate compacts, agreements.

5. Notwithstanding any other law to the contrary, the commissioner is authorized, subject to the provisions of section 6 of P.L.2011, c.119 (C.17:22-6.69f), to enter into, modify and to terminate this State's participation in one or more compacts or agreements necessary to implement the federal "Nonadmitted and Reinsurance Reform Act of 2010," Pub.L.111-203 (15 U.S.C. s.8201 et seq.), as authorized by that act, including, but not limited to, the imposition of eligibility requirements or establishment of eligibility criteria for nonadmitted surplus lines insurers.

C.17:22-6.69f Authority to nullify commissioner's decision.

6. The commissioner shall submit any decision to enter into or terminate this State's participation in any compacts or agreements pursuant to section 4 or 5 of P.L.2011, c.119 (C.17:22-6.69d or C.17:22-6.69e) to the Joint Budget Oversight Committee, or its successor. The Joint Budget Oversight Committee, or its successor, shall have the authority to nullify any decision to enter into or terminate participation in a compact or agreement. The committee shall notify the commissioner in writing of any nullification within 30 days of receipt of the commissioner's decision. Should the committee not act within 30 days of receipt of the commissioner's decision, the commissioner's decision shall be deemed approved.

C.17:22-6.69g Rules, regulations.

7. The commissioner, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt such rules and regulations as may be necessary to effectuate the purposes of this act.

8. This act shall take effect on July 21, 2011, but the commissioner may take any action in advance thereof to enter into one or more compacts or agreements as set forth in section 4 or 5 of this act, and may take anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved August 19, 2011.