

ASSEMBLY, No. 2670

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 13, 2010

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

The “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



A2670 SCHAER

2

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

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

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8 1. (New section) Sections 1 and 2 of this amendatory and
9 supplementary act shall be known and may be cited as the
10 “Reinsurance and Surplus Lines Stimulus and Enhancement Act.”

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12 2. (New section) a. Notwithstanding any other provision of law
13 to the contrary, a domestic insurer possessing policyholder surplus
14 of at least \$15,000,000 may, pursuant to a resolution by its board of
15 directors, and upon the written approval of the Commissioner of
16 Banking and Insurance, be designated as a domestic surplus lines
17 insurer.

18 b. A domestic surplus lines insurer shall only insure in this State
19 a New Jersey risk procured from a surplus lines producer in
20 accordance with the provisions of “the surplus lines law,” P.L.
21 1960, c.32 (C. 17:22-6.40 et seq.).

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

25
26 3. Section 2 of P.L.1993, c.243 (C.17:51B-2) is amended to read
27 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (3) Provides any additional information, which may include, but
41 may not be limited to, information regarding the concentration of
42 the insurer's exposures, geographic or otherwise, and satisfies such
43 additional requirements as the commissioner deems necessary to
44 ensure that the particular insurer's condition and methods of
45 operation are not such as would render its operations hazardous to
46 the public or policyholders in this State; except that the requirement
47 of paragraph (1) of this subsection shall not apply to reinsurance

1 ceded and assumed pursuant to pooling arrangements among
2 insurers in the same holding company system; or

3 d. The reinsurance is ceded to an assuming insurer which
4 maintains a trust fund in a qualified United States financial
5 institution for the payment of the valid claims of its United States
6 policyholders and ceding insurers, their assigns and successors in
7 interest. The assuming insurer shall report annually to the
8 commissioner information substantially the same as that required to
9 be reported on the NAIC Annual Statement form by licensed
10 insurers to enable the commissioner to determine the sufficiency of
11 the trust fund. In addition to the requirements of this subsection,
12 the assuming insurer shall provide any additional information,
13 which may include, but may not be limited to, information
14 regarding the concentration of the insurer's exposures, geographic
15 or otherwise, and satisfy such additional requirements as the
16 commissioner deems necessary to ensure that the particular insurer's
17 condition and methods of operation are not such as would render its
18 operations hazardous to the public or policyholders in this State.

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

24 (2) In the case of a group of insurers, which group includes
25 individual unincorporated underwriters, the trust shall consist of a
26 trusteed account representing the group's liabilities attributable to
27 business written in the United States and, in addition, the group
28 shall maintain a trusteed surplus of which not less than
29 \$100,000,000 shall be held jointly for the benefit of United States
30 ceding insurers of any member of the group; and the group shall
31 make available to the commissioner an annual certification of the
32 solvency of each underwriter for the fiscal period immediately
33 preceding, which shall not be less than one year, by the group's
34 domiciliary regulator and its independent certified public
35 accountant.

36 (3) In the case of a group of incorporated insurers under
37 common administration which complies with the filing
38 requirements contained in this section, has continuously transacted
39 an insurance business outside the United States for at least three
40 years immediately prior to making application for accreditation,
41 submits to this State's authority to examine its books and records
42 and bears the expense of the examination, and which has aggregate
43 policyholders' surplus of not less than \$10,000,000,000: the trust
44 shall be in an amount equal to the group's several liabilities
45 attributable to business ceded by United States ceding insurers to
46 any member of the group pursuant to reinsurance contracts issued in
47 the name of such group; plus a joint trusteed surplus of which not
48 less than \$100,000,000 shall be held jointly and exclusively for the

1 benefit of United States ceding insurers of any member of the group
2 as additional security for any such liabilities; and each member of
3 the group shall make available to the commissioner an annual
4 certification of the member's solvency for the fiscal period
5 immediately preceding, which shall not be less than one year, by the
6 member's domiciliary regulator and its independent certified public
7 accountant.

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

26 e. The commissioner may, in his discretion, allow credit for
27 reinsurance if the reinsurance is ceded to an assuming insurer not
28 meeting the requirements of subsection a., b., c. or d. of this section
29 but only with respect to the insurance of risks located in
30 jurisdictions where such reinsurance is required or provided by
31 applicable law or regulation of that jurisdiction ; or

32 f. The commissioner may, in his discretion, allow credit for
33 reinsurance if the reinsurance is ceded to an assuming insurer not
34 meeting the requirements of subsection a., b., c. or d. of this section
35 but only if the assuming insurer holds surplus or equivalent in
36 excess of \$250,000,000. In determining whether credit should be
37 allowed, the commissioner shall consider the following: (1) that
38 the reinsurer has a secure financial strength rating from at least two
39 nationally recognized statistical rating organizations deemed
40 acceptable by the commissioner; (2) the domiciliary regulatory
41 jurisdiction of the assuming insurer; (3) the structure and authority
42 of the domiciliary regulator with regard to solvency regulation
43 requirements and the financial surveillance of the reinsurer; (4) the
44 substance of financial and operating standards for reinsurers in the
45 domiciliary jurisdiction; (5) the form and substance of financial
46 reports required to be filed by the reinsurer in the domiciliary
47 jurisdiction or other public financial statements filed in accordance
48 with generally accepted accounting principles; (6) the domiciliary

1 regulator's willingness to cooperate with United States regulators in
2 general and the commissioner, in particular; (7) the history of
3 performance by reinsurers in the domiciliary jurisdiction; (8) any
4 documented evidence of substantial problems with the enforcement
5 of valid United States judgments in the domiciliary jurisdiction; and
6 (9) any other matters deemed relevant by the commissioner. The
7 commissioner shall give appropriate consideration to insurer group
8 ratings that may have been issued. The commissioner may, in lieu
9 of granting full credit under this subsection, reduce the amount
10 required to be held in trust under subsection d. of this section.

11 The provisions of this subsection shall apply only to reinsurance
12 contracts entered into or renewed on or after the effective date of
13 P.L. _____, c. _____ (pending before the Legislature as this bill), except
14 that the provisions applicable to life reinsurance contracts shall not
15 become effective until the earlier of 24 months from the effective
16 date of P.L. _____, c. _____ (pending before the Legislature as this bill),
17 or the implementation of principles-based standards of life
18 insurance reserving by the National Association of Insurance
19 Commissioners .

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

38 (cf: P.L.1993, c.243, s.2)

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

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STATEMENT

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47 This bill, the "Reinsurance and Surplus Lines Stimulus
48 Enhancement Act," provides incentives for surplus lines insurers

1 and reinsurers that are financially sound to do business in New
2 Jersey.

3 The bill establishes a process, under the oversight of the
4 Commissioner of Banking and Insurance, for a domestic insurer
5 with policyholder surplus in excess of \$15,000,000 to be designated
6 as a domestic surplus lines insurer. Under this designation, a
7 domestic surplus lines insurer could only insure New Jersey risks
8 procured from a surplus lines producer in accordance with the
9 provisions of “the surplus lines law,” P.L.1960, c.32 (C. 17:22-6.40
10 et seq.). A domestic surplus lines insurer could not issue policies of
11 private passenger automobile insurance, workers’ compensation or
12 workers’ occupational disease insurance.

13 The bill also permits the commissioner, in the commissioner’s
14 discretion, to allow credit for reinsurance if the reinsurance is ceded
15 to an assuming insurer that holds surplus or the equivalent in excess
16 of \$250,000,000. In determining whether credit should be allowed,
17 the commissioner shall consider certain requirements enumerated in
18 the bill, which largely relate to the adequacy of the regulatory
19 authority in the insurer’s domiciliary jurisdiction.