

## SUBCHAPTERS 26 THROUGH 27. (RESERVED)

## SUBCHAPTER 28. FORMATION OF A DOMESTIC PROPERTY AND CASUALTY INSURANCE CORPORATION (STOCK OR MUTUAL) OR RECIPROCAL INSURANCE EXCHANGE

**11:1-28.1 Purpose**

This subchapter sets forth the filing requirements for the granting of a certificate of authority to transact property and casualty insurance in this State, pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., and 17:46B-1 et seq., and to transact business as a reciprocal insurance exchange, pursuant to N.J.S.A. 17:50-1 et seq. This subchapter also sets forth the requirements for a domestic property and casualty insurer to be designated as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.

Amended by R.2012 d.112, effective June 4, 2012.  
See: 44 N.J.R. 548(a), 44 N.J.R. 1701(b).  
Inserted the last sentence.

**11:1-28.2 Scope**

This subchapter applies to all persons seeking to form a property and casualty insurance corporation or reciprocal insurance exchange in this State. This subchapter also applies to any domestic property and casualty insurer seeking to be designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.

Amended by R.2012 d.112, effective June 4, 2012.  
See: 44 N.J.R. 548(a), 44 N.J.R. 1701(b).  
Inserted the last sentence.

**11:1-28.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Actuary” means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

“Annual statement” means the form of statement that is described in N.J.S.A. 17:23-1.

“Applicant” means a domestic corporation seeking to obtain a certificate of authority to transact property and casualty insurance in this State or the attorney in fact representing a proposed reciprocal insurance exchange seeking to obtain a certificate of authority to transact business pursuant to N.J.S.A. 17:50-1 et seq.

“Attorney in fact” or “attorney” means a person or corporation possessing the power of attorney to act on behalf of a reciprocal insurance exchange.

“Capital” means par value per share multiplied by the number of issued shares, or in the case of no-par shares, the total stated value.

“Certificate of authority” means a certificate issued by the Commissioner evidencing the authority of a corporation to transact insurance in this State.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Domestic insurer” means an insurer formed under the laws of this State.

“Domestic surplus lines insurer” means a domestic property and casualty insurer formed pursuant to this subchapter designated as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b and this subchapter.

“Property and casualty insurance” means all lines of business for which an insurance company may be formed to transact, pursuant to N.J.S.A. 17:17-1, and includes mortgage guarantee insurance and title insurance pursuant to N.J.S.A. 17:46A-1 et seq. and 17:46B-1 et seq., respectively.

“Surplus” means the net worth of an insurer as reported in its annual statement. For a stock insurer, surplus means net worth less minimum capital. For a mutual insurer, surplus means its net worth.

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).  
Amended by R.2005 d.350, effective October 17, 2005.  
See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).  
Added definitions “Capital” and “Surplus”.  
Amended by R.2012 d.112, effective June 4, 2012.  
See: 44 N.J.R. 548(a), 44 N.J.R. 1701(b).

In the introductory paragraph, inserted a comma following “meanings”; and added definition “Domestic surplus lines insurer”.

**11:1-28.4 Types of insurance**

(a) The following are the types of insurance which a company may be formed to transact under the stated paragraphs of N.J.S.A. 17:17-1:

1. Paragraph “a” means fire and allied lines, earthquake and growing crops;
2. Paragraph “b” means ocean marine, inland marine, automobile physical damage and aircraft physical damage;
3. Paragraph “e” means worker’s compensation and employer’s liability, automobile liability (bodily injury), automobile liability (property damage) and other liability;
4. Paragraph “f” means boiler and machinery;
5. Paragraph “g” means fidelity and surety;
6. Paragraph “i” means credit;
7. Paragraph “j” means burglary and theft;

8. Paragraph “k” means glass;

9. Paragraph “l” means sprinkler leakage and water damage;

10. Paragraph “m” means livestock;

11. Paragraph “n” means smoke and smudge; and

12. Paragraph “d” means accident and health insurance as defined in N.J.S.A. 17B:17-4.

(b) The following are the miscellaneous coverages allowed under N.J.S.A. 17:17-1, paragraph “o”:

1. All loss to buildings and structures, including consequential loss, and against loss or damage to property of others, caused by an insured;

2. The perils of radioactive contamination and all other perils causing physical loss to nuclear energy installations and facilities including consequential loss; and

3. All other miscellaneous coverage, including, but not limited to, the following:

i. Loss or damage to property by epidemic;

ii. Loss or damage to property by power failure or mechanical breakdown;

iii. Loss or damage to property or any insurable interest therein caused by insects or by radiation resulting from atomic fission;

iv. Engine breakdown;

v. Loss or damage to property of the assured caused by falling of tanks or equipment for protecting property against fire, by explosion other than steam boilers, pipes, engines, motor, and machinery connected therewith (except fire);

vi. Loss resulting from the right to participate in associations or pools, such as NEPIA and NELIA, which associations or pools are authorized to write “All Risks” insurance involving nuclear fuel exposure;

vii. Economic security; and

viii. All other liability not covered under N.J.S.A. 17:17-1(e), including voluntarily assumed liability.

(c) A stock insurance company may be formed to transact solely the following lines of business:

1. Mortgage guarantee insurance, pursuant to N.J.S.A. 17:46A-1 et seq.; and

2. Title insurance, pursuant to N.J.S.A. 17:46B-1 et seq.

#### 11:1-28.4A Designation as a domestic surplus lines insurer

(a) Pursuant to N.J.S.A. 17:22-6.69b, a domestic property and casualty insurer possessing policyholder surplus of at least \$15,000,000 may, pursuant to a resolution of its board of directors, and upon approval by the Commissioner, 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 producer in accordance with the provisions of N.J.S.A. 17:22-6.40 et seq. This limitation with respect to New Jersey risks shall not be deemed to limit such insurer from transacting business as a surplus lines insurer in another state or jurisdiction pursuant to that state’s or jurisdiction’s requirements.

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

(d) Insurance written by a domestic surplus lines insurer shall be subject to a tax on premiums as provided by N.J.S.A. 17:22-6.59.

(e) A domestic insurer that is designated as a domestic surplus lines insurer shall only be approved to write the lines of surplus lines coverage that it is approved to write as a domestic insurer pursuant to its authority as a domestic insurer in this State, and may be considered as approved to write those lines by this State for purposes of seeking surplus lines eligibility in other states or jurisdictions.

(f) 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).”