

ASSEMBLY, No. 5067

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

SYNOPSIS

Establishes New Jersey Pandemic Risk Reinsurance Program.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning business interruption insurance coverage under
2 certain circumstances and supplementing Title 17 of the Revised
3 Statutes.

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

7
8 1. As used in this act:

9 “Business interruption insurance” means commercial lines of
10 property and casualty insurance coverage provided or made
11 available for losses resulting from periods of suspended business
12 operations, whether provided under broader coverage for property
13 losses or separately.

14 “Commissioner” means the Commissioner of Banking and
15 Insurance.

16 “Covered public health emergency” means any outbreak of
17 infectious disease or pandemic for which an emergency is declared:

18 (1) by the Governor during a state of emergency declared
19 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or a public
20 health emergency declared pursuant to P.L.2005, c.222 (C.26:13-1
21 et seq.);

22 (2) under the federal Public Health Service Act; or

23 (3) by the President of the United States as a public health
24 emergency or major disaster under the Robert T. Stafford Disaster
25 Relief and Emergency Assistance Act.

26 “Department” means the Department of Banking and Insurance.

27 “Eligible employee” means a full-time employee who works a
28 normal work week of 25 or more hours.

29 “Eligible insurer” means an entity or affiliate that:

30 (1) issues policies insuring against loss or damage to property
31 that include the loss of use and occupancy and business interruption
32 in this State;

33 (2) is a recipient of direct earned premiums for any type of
34 commercial property and casualty insurance coverage;

35 (3) is licensed or admitted to provide insurance in New Jersey;
36 and

37 (4) meets any other criteria as determined by the commissioner.

38 “Fund” means the New Jersey Pandemic Risk Reinsurance Fund
39 created pursuant to section 4 of this act.

40 “Insurer deductible” means the value of the insurer’s direct
41 earned premiums during the immediately preceding calendar year,
42 multiplied by 5%.

43 “Property and casualty insurance” means commercial lines of
44 property and casualty insurance, including excess insurance,
45 workers’ compensation insurance, and directors and officers
46 liability insurance. “Property and casualty insurance” does not
47 include:

48 (1) private mortgage insurance or title insurance;

- 1 (2) medical malpractice or other professional liability insurance;
- 2 (3) life or health insurance; or
- 3 (4) flood insurance provided under the National Flood Insurance
- 4 Act.

5

6 2. The commissioner shall establish the New Jersey Pandemic

7 Risk Reinsurance Program pursuant to the following guidelines:

8 a. No compensation shall be paid from the program unless the

9 aggregate industry losses in New Jersey resulting from a covered

10 public health emergency exceed \$75 million.

11 b. Subject to the availability of funds, the aggregate annual

12 maximum amount paid out of the program shall not exceed \$500

13 million.

14 c. Losses in excess of the insurer deductible but not exceeding

15 the aggregate annual maximum amount pursuant to subsection b. of

16 this section shall be covered jointly by the program and

17 participating eligible insurers subject to each insurer's retention.

18 d. The program shall pay incurred losses on a pro rata basis,

19 the methodology for which shall be determined by the

20 commissioner within 240 days of the effective date of this act.

21 e. Reinsurance purchased by a participating eligible insurer

22 through the private market shall not affect the calculation of the

23 insurer's deductible or retention.

24

25 3. a As a condition of participating in the New Jersey

26 Pandemic Risk Reinsurance Program established pursuant to this

27 act, an eligible insurer shall offer to an insured or prospective

28 insured with no more than 100 eligible employees in the State of

29 New Jersey, a rider to the insurance policy which includes, as a

30 covered peril under that policy, coverage for global virus

31 transmission or pandemic, or both, pursuant to a covered public

32 health emergency.

33 b. The Commissioner of Banking and Insurance shall, on an

34 expedited basis, review and approve, as appropriate, any insurance

35 policy rider submitted by an insurer and designed to provide the

36 coverage offered pursuant to this section.

37

38 4. a. There is created a special, non-lapsing fund in the

39 Department of Banking and Insurance that shall be designated the

40 "New Jersey Pandemic Risk Reinsurance Fund." The fund shall be

41 maintained as a separate account and administered by the

42 Commissioner of Banking and Insurance. The fund shall be used to

43 establish and fund the New Jersey Pandemic Risk Reinsurance

44 Program established pursuant to section 2 of this act.

45 b. The fund shall consist of:

46 (1) an amount the commissioner deems appropriate to fully fund

47 the program, which shall not be less than \$50 million, appropriated

48 annually out of the General Fund of the State;

1 (2) not less than \$50 million out of the amounts of federal
2 government assistance provided to this State pursuant to
3 "Coronavirus Aid, Relief, and Economic Security Act," Pub. Law
4 116-136; and

5 (3) not less than \$50 million out of the amounts of additional
6 federal government assistance that may become available to this
7 State with regard to the coronavirus disease 2019 pandemic.

8 c. All interest earned on the moneys that have been deposited
9 into the fund shall be retained in the fund and used for purposes
10 consistent with the fund.

11 d. Moneys in the fund shall only be used for the purposes
12 established in this act.

13
14 5. Upon the enactment of any legislation to establish a Federal
15 Pandemic Risk Reinsurance Program, or any similar program at the
16 federal level, the commissioner shall gradually cease operation of
17 the New Jersey Pandemic Risk Reinsurance Program established
18 pursuant to this act.

19
20 6. This act shall take effect immediately and shall apply to
21 insurance policies issued or renewed beginning 90 days after the
22 date of enactment.

23 24 25 STATEMENT

26
27 This bill establishes the New Jersey Pandemic Risk Reinsurance
28 Fund and the New Jersey Pandemic Risk Reinsurance Program
29 (program) for eligible insurers offering business interruption
30 insurance coverage pursuant to the bill when claims payable
31 resulting from the covered public health emergency exceed \$75
32 million Statewide.

33 Under the bill, the Commissioner of Banking and Insurance is to
34 establish the New Jersey Pandemic Risk Reinsurance Program
35 pursuant to the following guidelines:

36 a. No compensation is to be paid from the program unless the
37 aggregate industry losses in New Jersey resulting from a covered
38 public health emergency exceed \$75 million.

39 b. Subject to the availability of funds, the aggregate annual
40 maximum amount paid out of the program is not to exceed \$500
41 million.

42 c. Losses in excess of the insurer deductible but not exceeding
43 the aggregate annual maximum amount pursuant to the provisions
44 of the bill are to be covered jointly by the program and participating
45 eligible insurers subject to each insurer's retention.

46 d. The program is to pay incurred losses on a pro rata basis, the
47 methodology for which is to be determined by the commissioner
48 within 240 days of the effective date of this act.

1 e. Reinsurance purchased by a participating eligible insurer
2 through the private market is not to affect the calculation of the
3 insurer's deductible or retention.

4 The bill provides that the New Jersey Pandemic Risk
5 Reinsurance Fund is to consist of an annual appropriation out of the
6 General Fund of the State of not less than \$50 million. In addition,
7 the bill provides for not less than \$50 million to be allocated out of
8 the amounts of federal government assistance provided to this State
9 pursuant to "Coronavirus Aid, Relief, and Economic Security Act,"
10 Pub. Law 116-136. Lastly, the bill provides that, out of the
11 amounts of additional federal government assistance that may
12 become available to this State with regard to the coronavirus
13 disease 2019 pandemic, not less than \$50 million is to be allocated
14 to the New Jersey Pandemic Risk Reinsurance Fund.

15 The bill provides that, as a condition of participating in the New
16 Jersey Pandemic Risk Reinsurance Program established pursuant to
17 this act, an eligible insurer is required to offer to an insured or
18 prospective insured with no more than 100 eligible employees in the
19 State of New Jersey, a rider to the insurance policy which includes,
20 as a covered peril under that policy, coverage for global virus
21 transmission or pandemic, or both, pursuant to a covered public
22 health emergency.

23 The Commissioner of Banking and Insurance is to review and
24 approve, as appropriate and on an expedited basis, any insurance
25 policy rider submitted by an insurer and designed to provide the
26 coverage offered pursuant to this section.