

17:51B-1 to 4

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Reinsurance--conditions
for credits)

NJSA: 17:51B-1 to 17:51B-4

LAWS OF: 1993 **CHAPTER:** 243

BILL NO: A84

SPONSOR(S) Farragher

DATE INTRODUCED: February 1, 1993

COMMITTEE: **ASSEMBLY:** Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** May 13, 1993

SENATE: June 21, 1993

DATE OF APPROVAL: August 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:

"Governor signs stricter scrutiny for insurance companies in state," 8-10-93.
Star Ledger.

Attached:

Model law on credit for reinsurance, promulgated by National Association
Insurance Commissioners.

KBG:pp

[SECOND REPRINT]

ASSEMBLY, No. 84

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1993

By Assemblywoman FARRAGHER, Assemblymen KRAMER,
Zecker, DiGaetano, Assemblywoman Crecco, Assemblyman
Penn, Assemblywoman Wright, Assemblymen Augustine,
Gibson, Geist, Assemblywoman Heck, Assemblymen Kavanaugh,
Felice, Wolfe and Assemblywoman Haines

1 AN ACT concerning reinsurance ², amending P.L.1960, c.32 and
2 supplementing Title 17 of the Revised Statutes².

3

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

6 1. ²(New section)² For purposes of this act:

7 "Commissioner" means the Commissioner of Insurance.

8 "Insurer" means:

9 (1) Any corporation, association, partnership, reciprocal
10 exchange, interinsurer, Lloyd's insurer, fraternal benefit society
11 or other person engaged in the business of insurance pursuant to
12 Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of
13 Title 17B of the New Jersey Statutes;

14 (2) Any medical service corporation operating pursuant to
15 P.L.1940, c.74 (C.17:48A-1 et seq.);

16 (3) Any hospital service corporation operating pursuant to
17 P.L.1938, c.366 (C.17:48-1 et seq.);

18 (4) Any health service corporation operating pursuant to
19 P.L.1985, c.236 (C.17:48E-1 et seq.); and

20 (5) Any dental service corporation operating pursuant to
21 P.L.1968, c.305 (C.17:48C-1 et seq.).

22 "NAIC" means the National Association of Insurance
23 Commissioners.

24 "Qualified United States financial institution," (1) as used in
25 subsection c. of section 3 of this act, means an institution that:
26 (a) is organized or, in the case of a branch or agency office of a
27 foreign banking organization in the United States, licensed, under
28 the laws of the United States or any state thereof; (b) is
29 regulated, supervised and examined by federal or state
30 authorities having regulatory authority over banks and trust
31 companies; and (c) has been determined by either the
32 commissioner, or the Securities Valuation Office of the NAIC, to
33 meet such standards of financial condition and standing as are
34 considered necessary and appropriate to regulate the quality of
35 financial institutions whose letters of credit will be acceptable to
36 the commissioner; or (2) as used elsewhere in this act, means an
37 institution that: (a) is organized or, in the case of a branch or
38 agency office of a foreign banking organization in the United
39 States, licensed, under the laws of the United States or any state
40 thereof and has been granted authority to operate with fiduciary
41 powers; and (b) is regulated, supervised and examined by federal

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AIN committee amendments adopted March 29, 1993.

² Senate floor amendments adopted June 10, 1993.

1 or state authorities having regulatory authority over banks and
2 trust companies.

3 2. ²(New section)² Credit for reinsurance ceded by an insurer
4 which is domiciled in New Jersey, or which is ¹either¹ licensed in
5 New Jersey or eligible to write surplus lines insurance in New
6 Jersey ¹[but] and which in either case is¹ domiciled in a state or
7 country which does not employ standards regarding credit for
8 reinsurance ¹substantially¹ similar, as determined by the
9 commissioner, to those applicable under this act, shall be allowed
10 as either an asset or a deduction from liability only when:

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

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

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

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

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

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

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

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

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

37 (6) Provides any additional information ¹, which may include,
38 but may not be limited to, information regarding the
39 concentration of the insurer's exposures, geographic or
40 otherwise,¹ and satisfies ¹[any] such¹ additional requirements
41 as¹ the commissioner ¹[may establish by regulation] deems
42 necessary to ensure that the particular insurer's condition and
43 methods of operation are not such as would render its operations
44 hazardous to the public or policyholders in this State¹.

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

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

1 United States branch of an assuming alien insurer:

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

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

6 (3) ¹[Satisfies any] Provides any additional information, which
7 may include, but may not be limited to, information regarding the
8 concentration of the insurer's exposures, geographic or
9 otherwise, and satisfies such¹ additional requirements as the
10 commissioner ¹[may establish by regulation] deems necessary to
11 ensure that the particular insurer's condition and methods of
12 operation are not such as would render its operations hazardous
13 to the public or policyholders in this State¹;

14 except that the requirement of paragraph (1) of this subsection
15 shall not apply to reinsurance ceded and assumed pursuant to
16 pooling arrangements among insurers in the same holding
17 company system; or

18 d. The reinsurance is ceded to an assuming insurer which
19 maintains a trust fund in a qualified United States financial
20 institution for the payment of the valid claims of its United
21 States policyholders and ceding insurers, their assigns and
22 successors in interest. The assuming insurer shall report annually
23 to the commissioner information substantially the same as that
24 required to be reported on the NAIC Annual Statement form by
25 licensed insurers to enable the commissioner to determine the
26 sufficiency of the trust fund. ¹[The assuming insurer shall also
27 satisfy any additional requirements the commissioner may
28 establish by regulation, in addition to the requirements of this
29 subsection.] In addition to the requirements of this subsection,
30 the assuming insurer shall provide any additional information,
31 which may include, but may not be limited to, information
32 regarding the concentration of the insurer's exposures,
33 geographic or otherwise, and satisfy such additional requirements
34 as the commissioner deems necessary to ensure that the
35 particular insurer's condition and methods of operation are not
36 such as would render its operations hazardous to the public or
37 policyholders in this State.¹

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

43 (2) In the case of a group of ²insurers, which group includes²
44 individual unincorporated underwriters, the trust shall consist of
45 a trusteed account representing the group's liabilities
46 attributable to business written in the United States and, in
47 addition, the group shall maintain a trusteed surplus of which not
48 less than \$100,000,000 shall be held jointly for the benefit of
49 United States ceding insurers of any member of the group; and
50 the group shall make available to the commissioner an annual
51 certification of the solvency of each underwriter for the fiscal
52 period immediately preceding, which shall not be less than one
53 year, by the group's domiciliary regulator and its independent
54 certified public accountant.

1 (3) In the case of a group of incorporated insurers under
2 common administration which complies with the filing
3 requirements contained in this section, has continuously
4 transacted an insurance business outside the United States for at
5 least three years immediately prior to making application for
6 accreditation, submits to this State's authority to examine its
7 books and records and bears the expense of the examination, and
8 which has aggregate policyholders' surplus of not less than
9 \$10,000,000,000: the trust shall be in an amount equal to the
10 group's several liabilities attributable to business ceded by
11 United States ceding insurers to any member of the group
12 pursuant to reinsurance contracts issued in the name of such
13 group; plus a joint trusteed surplus of which not less than
14 \$100,000,000 shall be held jointly ¹and exclusively¹ for the
15 benefit of United States ceding insurers of any member of the
16 group as additional security for any such liabilities; and each
17 member of the group shall make available to the commissioner an
18 annual certification of the member's solvency for the fiscal
19 period immediately preceding, which shall not be less than one
20 year, by the member's domiciliary regulator and its independent
21 certified public accountant.

22 Any trust established pursuant to this subsection shall be in a
23 form approved by the commissioner ¹, and the content, location,
24 legal currency and financial institutions shall be acceptable to
25 the commissioner¹. The trust instrument shall provide that
26 contested claims shall be valid and enforceable upon the final
27 order of any court of competent jurisdiction in the United
28 States. The trust shall vest legal title to its assets in the trustees
29 of the trust for its United States policyholders and ceding
30 insurers, their assigns and successors in interest. The trust and
31 the assuming insurer shall be subject to examination as
32 determined by the commissioner. The trust shall remain in effect
33 for as long as the assuming insurer has outstanding obligations
34 due under the reinsurance agreements subject to the trust. No
35 later than February 28 of each year the trustees of the trust shall
36 report to the commissioner in writing setting forth the balance of
37 the trust and listing the trust's investments at the preceding
38 year's end and shall certify the date of termination of the trust,
39 if so planned, or certify that the trust shall not expire prior to
40 the next following December 31; or

41 e. The commissioner may, in his discretion, allow credit for
42 reinsurance if the reinsurance is ceded to an assuming insurer not
43 meeting the requirements of subsection a., b., c. or d. of this
44 section but only with respect to the insurance of risks located in
45 jurisdictions where such reinsurance is required or provided by
46 applicable law or regulation of that jurisdiction.

47 If the assuming insurer is not licensed or accredited to transact
48 insurance or reinsurance in this State, the credit permitted by
49 subsections c. and d. of this section shall not be allowed unless
50 the assuming insurer agrees in the reinsurance agreements: (1)
51 that in the event of the failure of the assuming insurer to
52 perform its obligations under the terms of the reinsurance
53 agreement, the assuming insurer, at the request of the ceding
54 insurer, shall submit to the jurisdiction of any court of competent

1 jurisdiction in any state of the United States, shall comply with
2 all requirements necessary to give such court jurisdiction, and
3 shall abide by the final decision of such court or any appellate
4 court in the event of an appeal; and (2) to designate the
5 commissioner or a designated attorney as its true and lawful
6 attorney upon whom may be served any lawful process in any
7 action, suit or proceeding instituted by or on behalf of the ceding
8 company. This provision is not intended to conflict with or
9 override the obligation of the parties to a reinsurance agreement
10 to arbitrate their disputes, if such an obligation is created in the
11 agreement.

12 3. ²(New section)² A reduction in liability for the reinsurance
13 ceded by an insurer which is domiciled in New Jersey, or which is
14 ¹either¹ licensed in New Jersey or eligible to write surplus lines
15 insurance in New Jersey ¹[but] and which in either case is¹
16 domiciled in a state or country which does not employ standards
17 regarding credit for reinsurance substantially similar, as
18 determined by the commissioner, to those applicable under this
19 act, shall be allowed in an amount not exceeding the liabilities
20 carried by the ceding insurer and such reduction shall be in the
21 amount of funds held by or on behalf of the ceding insurer,
22 including funds held in trust for the ceding insurer, under a
23 reinsurance contract with such assuming insurer as security for
24 the payment of obligations thereunder, if such security is held in
25 the United States subject to withdrawal solely by, and under the
26 exclusive control of, the ceding insurer; or, in the case of a trust,
27 held in a qualified United States financial institution subject to
28 withdrawal solely by, and under the exclusive control of, the
29 ceding insurer. This security shall be in the form of:

- 30 a. Cash;
- 31 b. Securities listed by the Securities Valuation Office of the
32 NAIC and qualifying as admitted assets;
- 33 c. Clean, irrevocable, evergreen, unconditional letters of
34 credit issued or confirmed by a qualified United States financial
35 institution no later than December 31st of the year for which the
36 filing is being made, and in the possession of the ceding company
37 on or before the filing date of its annual statement. Letters of
38 credit meeting applicable standards of issuer acceptability as of
39 the dates of their issuance or confirmation shall, notwithstanding
40 the issuing or confirming qualified United States financial
41 institution's subsequent failure to meet applicable standards of
42 issuer acceptability, continue to be acceptable as security until
43 their expiration, extension, renewal, modification or amendment,
44 whichever occurs first, unless the issuer has been declared
45 insolvent under applicable statutory or regulatory provisions; or
- 46 d. Any other form of security acceptable to the commissioner.

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

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

- 1 (a) Eligibility of the insurer must be requested in writing by a
2 licensed surplus lines agent;
- 3 (b) The insurer must be currently an authorized insurer in the
4 state or country of its domicile as to the kind or kinds of
5 insurance proposed to be so placed, and must have been such an
6 insurer for not less than one full year preceding; or must be the
7 subsidiary of an admitted insurer or of an already eligible surplus
8 lines insurer that has been so admitted or eligible for a period of
9 not less than one full year preceding;
- 10 (c) Before granting eligibility the requesting surplus lines
11 agent or the insurer shall furnish the commissioner with duly
12 authenticated copies of its current annual financial statement,
13 one in the language and monetary values of the country of the
14 insurer, and the other in the English language and with all
15 monetary values therein expressed in United States dollars, at the
16 current exchange rate shown in the statement, and with such
17 additional information relative to the insurer as the commissioner
18 may require;
- 19 (d) The insurer shall establish satisfactory evidence of
20 financial integrity, and:
- 21 (1) Have capital and surplus, or its equivalent under the laws
22 of its domiciliary jurisdiction, which is not less than twice the
23 amount of minimum capital and surplus required for like admitted
24 insurers; except that any eligible insurer which does not possess
25 on the effective date of this amendatory and supplementary act
26 the minimum capital and surplus requirements shall have three
27 years from the effective date of this amendatory and
28 supplementary act to comply therewith]. In addition, an alien
29 insurer shall maintain in the United States an irrevocable trust
30 fund in a state or federally chartered bank in an amount not less
31 than \$1,500,000.00 for the protection of all of its policyholders in
32 the United States. The trust fund shall consist of cash,
33 securities, letters of credit, or of investments of substantially the
34 same character and quality as those which are eligible
35 investments for the capital and statutory reserves of admitted
36 insurers authorized to write like kinds of insurance in this State.
37 The trust fund shall not be included in any calculation of capital
38 and surplus or its equivalent and shall have an expiration date
39 which at no time shall be less than five years. In lieu of the
40 above capital and surplus requirements, and trust fund amount,
41 any Lloyd's or other similar group of alien insurers, which group
42 includes unincorporated [group of alien] individual insurers shall
43 maintain a trust fund of not less than \$50,000,000.00 as security
44 to the full amount thereof for all policyholders and creditors in
45 the United States of each member of the group, and the trust
46 shall likewise comply with the terms and conditions hereinabove
47 set forth. Any insurance exchange created by the laws of an
48 individual state may be approved by the commissioner as an
49 eligible insurer under the provisions of this section, and shall
50 maintain capital and surplus, or the substantial equivalent
51 thereof, of not less than \$35,000,000.00 in the aggregate. For
52 insurance exchanges which maintain funds in an amount
53 acceptable to the commissioner for the protection of all
54 insurance exchange policyholders, each individual syndicate shall

1 maintain minimum capital and surplus, or the substantial
2 equivalent thereof, of not less than \$2,000,000.00. In the event
3 the insurance exchange does not maintain funds in an amount
4 acceptable to the commissioner for the protection of all
5 insurance exchange policyholders, each individual syndicate shall
6 have capital and surplus, or its equivalent under the laws of its
7 domiciliary jurisdiction, which is not less than twice the amount
8 of minimum capital and surplus required for like admitted
9 insurers. No insurance exchange approved as an eligible insurer
10 by the commissioner shall be a member of the New Jersey Surplus
11 Lines Insurance Guaranty Fund created pursuant to P.L. 1984, c.
12 101 (C. 17:22-6.70 et seq.) nor shall any claim against an
13 exchange be deemed to be a covered claim pursuant to the
14 provision of that act and

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

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

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

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

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

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

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

8 Where it appears that any particular insurance risk which is
9 eligible for export, but insurance coverage thereon, in whole or in
10 part, is not procurable from the eligible surplus lines insurers,
11 then the surplus lines agent may file a supplemental affidavit
12 stating such facts and advising the commissioner that such part
13 of the risk as shall be unprocurable, as aforesaid, is being placed
14 with named unauthorized insurers, in the amounts and
15 percentages set forth in the affidavit. Such named unauthorized
16 insurer shall, however, before accepting any risk in this State,
17 deposit with the commissioner United States government bonds in
18 an amount acceptable to the commissioner, which shall be held by
19 said commissioner for the benefit of New Jersey policyholders
20 only and the surplus lines agent shall procure from such
21 unauthorized insurer and file with the commissioner a certified
22 copy of its current annual statement of financial condition. If
23 such deposit is made and the statement reveals, including both
24 capital and surplus, net assets of at least \$500,000.00 consisting
25 of at least \$300,000.00 liquid assets, then the surplus lines agent
26 may proceed to consummate the contract of insurance.
27 Whenever any insurance risk or any part thereof is placed with an
28 unauthorized insurer, as provided herein, the policy, binder or
29 cover note shall bear conspicuously on its face in boldface type
30 the following notation: "All or some of the insurers participating
31 in this risk have not been admitted to transact business in the
32 State of New Jersey, nor have they been approved as a surplus
33 lines insurer by the insurance commissioner of this State. The
34 placing of such insurance by a duly licensed surplus lines agent in
35 this State shall not be construed as approval of such insurer by
36 the insurance commissioner of the State of New Jersey." All
37 other provisions of this Title shall apply to such placement the
38 same as if such risks were placed with an eligible surplus lines
39 insurer.²

40 (cf: P.L.1987, c.407, s.1)

41 ²[4.] 5.² ²(New section)² The commissioner may promulgate
42 rules and regulations pursuant to the "Administrative Procedure
43 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary
44 to effectuate the purposes of this act.

45 ²[5.] 6.² This act shall take effect immediately and apply to
46 all cessions after the effective date of this act under reinsurance
47 agreements with an inception, anniversary or renewal date on or
48 after the 180th day following the effective date of this act.

49

50

51

52

53 Provides for the regulation of reinsurance.

- 1 ceding insurer. This security shall be in the form of:
- 2 a. Cash;
- 3 b. Securities listed by the Securities Valuation Office of the
4 NAIC and qualifying as admitted assets;
- 5 c. Clean, irrevocable, evergreen, unconditional letters of
6 credit issued or confirmed by a qualified United States financial
7 institution no later than December 31st of the year for which the
8 filing is being made, and in the possession of the ceding company
9 on or before the filing date of its annual statement. Letters of
10 credit meeting applicable standards of issuer acceptability as of
11 the dates of their issuance or confirmation shall, notwithstanding
12 the issuing or confirming qualified United States financial
13 institution's subsequent failure to meet applicable standards of
14 issuer acceptability, continue to be acceptable as security until
15 their expiration, extension, renewal, modification or amendment,
16 whichever occurs first, unless the issuer has been declared
17 insolvent under applicable statutory or regulatory provisions; or
- 18 d. Any other form of security acceptable to the commissioner.
- 19 4. The commissioner may promulgate rules and regulations
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), as may be necessary to effectuate the
22 purposes of this act.
- 23 5. This act shall take effect immediately and apply to all
24 cessions after the effective date of this act under reinsurance
25 agreements with an inception, anniversary or renewal date on or
26 after the 180th day following the effective date of this act.

27
28 STATEMENT
29

30 This bill essentially adopts the National Association of
31 Insurance Commissioners' (NAIC) model law on credit for
32 reinsurance. The bill specifies the conditions under which credit
33 for reinsurance as either an asset or a deduction from liability
34 shall be allowed a ceding insurer licensed in this State or eligible
35 surplus lines insurer. For example, credit must be allowed when
36 the insurance is ceded to an assuming insurer which:

- 37 (1) Is licensed to transact insurance in this State;
- 38 (2) Is accredited as a reinsurer in this State (the bill sets forth
39 requirements for accreditation);
- 40 (3) Is domiciled or licensed in a state which employs standards
41 for credit for reinsurance similar to those under this bill; or
- 42 (4) Maintains a trust fund in the United States for the payment
43 of claims in the amount and form set forth in the bill.

44 The bill also provides that credit for reinsurance may be
45 allowed when the insurance is ceded to an assuming insurer which
46 does not meet the requirements listed above, provided other
47 specified conditions are satisfied.

48 The provisions of the bill apply to all cessions after the
49 effective date of the bill under reinsurance agreements with an
50 inception, anniversary or renewal date which occurs at least six
51 months after the effective date of the bill.

52

53

54

55 _____
Provides for the regulation of reinsurance.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 84

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably and with committee amendments, Assembly, No. 84.

As amended by the committee, this bill essentially adopts the National Association of Insurance Commissioners' (NAIC) model law on credit for reinsurance. The bill specifies the conditions under which credit for reinsurance as either an asset or a deduction from liability shall be allowed a ceding insurer licensed in this State or eligible surplus lines insurer. For example, credit must be allowed when the insurance is ceded to an assuming insurer which:

- (1) Is licensed to transact insurance in this State;
- (2) Is accredited as a reinsurer in this State (the bill sets forth requirements for accreditation);
- (3) Is domiciled or licensed in a state which employs standards for credit for reinsurance similar to those under this bill; or
- (4) Maintains a trust fund in the United States for the payment of claims in the amount and form set forth in the bill.

The bill also provides that credit for reinsurance may be allowed when the insurance is ceded to an assuming insurer which does not meet the requirements listed above, provided other specified conditions are satisfied.

The provisions of the bill apply to all cessions after the effective date of the bill under reinsurance agreements with an inception, anniversary or renewal date which occurs at least six months after the effective date of the bill.

The amendments clarify the commissioner's authority with respect to requesting additional information or other requirements in order for a ceding insurer to receive credit for reinsurance and also clarify that additional information required may include the concentration of an insurer's exposures. The amendments also revise certain requirements concerning the establishment of the trust.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 84

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 84 (1R).

This bill essentially adopts the National Association of Insurance Commissioners' (NAIC) model law on credit for reinsurance. The bill specifies the conditions under which credit for reinsurance as either an asset or a deduction from liability shall be allowed a ceding insurer licensed in this State or eligible surplus lines insurer. For example, credit must be allowed when the insurance is ceded to an assuming insurer which:

- (1) Is licensed to transact insurance in this State;
- (2) Is accredited as a reinsurer in this State (the bill sets forth requirements for accreditation);
- (3) Is domiciled or licensed in a state which employs standards for credit for reinsurance similar to those under this bill; or
- (4) Maintains a trust fund in the United States for the payment of claims in the amount and form set forth in the bill.

The bill also provides that credit for reinsurance may be allowed when the insurance is ceded to an assuming insurer which does not meet the requirements listed above, provided other specified conditions are satisfied.

The provisions of the bill apply to all cessions after the effective date of the bill under reinsurance agreements with an inception, anniversary or renewal date which occurs at least six months after the effective date of the bill.

974.901
G61



OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

CONTACT: Jon Shure
(609) 777-2600

Peter Cammarano
(609) 633-3955

GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

####

MODEL LAW ON CREDIT FOR REINSURANCE

Table of Contents

- Section 1. Credit Allowed a Domestic Ceding Insurer
- Section 2. Reduction from Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer
- Section 3. Qualified United States Financial Institutions
- Section 4. Rules and Regulations
- Section 5. Reinsurance Agreements Affected

Section 1. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of 1A or B or C or D or E. If meeting the requirements of 1C or D, the requirements of 1F must also be met.

- A. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

Drafting Note: A state which provides for licensing of reinsurance by line, for consistency should adopt an amended version of Section 1A requiring the assuming insurer to be "licensed to transact reinsurance in this state."

- B. Credit shall be allowed when 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 U.S. branch of an alien assuming 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 of its state of domicile and a copy of its most recent audited financial statement; and either
 - (a) Maintains a surplus as regards policyholders in an amount which is not less than \$20,000,000 and whose accreditation has not been denied by the Commissioner within ninety days of its submission; or
 - (b) Maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the Commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Commissioner after notice and hearing.

Drafting Note: To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in Section 1B. If the Director, Superintendent or Commissioner of Insurance determines that the assuming insurer has failed to continue to meet any of these qualifications, he may upon written notice and hearing revoke accreditation.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or U.S. branch of an alien assuming insurer:

- (1) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and
- (2) Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of Subsection C(1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Drafting Note: The term "substantially similar" means standards which equal or exceed the standards of the enacting state, as determined by the Commissioner of the enacting state. It is expected that the NAIC will maintain a list of states whose laws establish standards which equal or exceed the standards of this model act.

- D. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Section 3B, 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 the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$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 by the group's domiciliary regulator and its independent public accountants.
- (2) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation; and 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 \$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 the group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly 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 by the member's domiciliary regulator and its independent public accountant.

- (3) Such trust shall be established in a form approved by the Commissioner of Insurance. 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 described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.
- (4) 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 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.

Drafting Note: Unless otherwise stated, "Commissioner" refers to the Commissioner of Insurance in the state where credit is taken.

Drafting Note: The Advisory Committee considered state capital surplus requirements as a threshold for the trustee surplus, but concluded that, on the basis of risk exposure and current industry security practices, the standards for credit should be higher under Subsection D. The \$100,000,000 trustee surplus requirement for a group of individual unincorporated underwriters reflects the higher financial standards currently found among the states for such a group. The \$20,000,000 trustee surplus requirements is a new option available to assuming insurers that do not satisfy both the licensing and financial standards of Subsection B or C.

- E. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of Subsections A, B, C or D but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

Drafting Note: For purposes of this Subsection E, jurisdiction refers to those jurisdictions other than the United States and also to any state, district, or territory of the United States. Subsection E allows credit to ceding insurers which are mandated by these jurisdictions to cede to state-owned or controlled insurance or reinsurance companies or to participate in pools, guaranty funds or joint underwriting associations.

- F. 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 Section 1 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, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of 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.

Section 2. Reduction from Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 1 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in Section 3B. This security may be in the form of:

- A. Cash.
- B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.
- C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States institution, as defined in Section 3A, no later than December 31st in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement.

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

Drafting Note: Providing for the continuing acceptability of letters of credit whose issuers were acceptable when the credit support facility was first obtained is intended to avoid abrupt interruptions in the acceptability of credit support arrangements that run for specific periods of time, and thus unnecessary disruptions in the marketplace, on account of the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability (whether by virtue of a change in the issuing institution's ability to qualify under the original standards or as a result of revisions to the applicable standards). The provision stipulates that letters of credit acceptable when first obtained will, in the event of the subsequent nonqualification of the issuing (or confirming) institution, continue to be acceptable as security until the account party and beneficiary would first have, in the normal course of business, an opportunity to replace the credit support facility.

- D. Any other form of security acceptable to the Commissioner.

Drafting Note: There is no implication in the requirement that the security for the payment of obligations must be held under the exclusive control of the ceding insurer that either the reserve liability or the assets held in relation to the reserve liability have not been transferred for the purposes of statutory accounting by the ceding insurer to the reinsurer.

Section 3. Qualified United States Financial Institutions

- A. For purposes of Section 2C, a "qualified United States financial institution" means an institution that:
- (1) Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
 - (2) Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and
 - (3) Has been determined by either the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

Drafting Note: The NAIC's Securities Valuation Office (SVO) in New York City maintains, on a current basis and in accordance with the standards set forth in Section 2(B)(4)(i) of its published Procedures, a list of all U.S. financial institutions (including U.S. branch and agency offices of foreign banks) that have, upon application to the SVO been determined to meet the standards of financial condition and standing set forth in Section 2(B)(4)(i) of the SVO's Procedures. These standards, developed by the NAIC's Letter of Credit (EX4) Study Group, make use of nationally recognized ratings services, and are more rigorous in the case of foreign banking organizations (whose standby letters of credit must be issued by a U.S. branch or agency office of the foreign bank) than those that are applicable to domestic financial institutions whose standby letters of credit would be considered acceptable.

- B. A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
- (1) Is organized, or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
 - (2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

Drafting Note: Because assets held in a fiduciary capacity are not subject to the claims of the trustee's creditors, and because the trust departments of all U.S. financial institutions (including U.S. branch or agency offices of foreign banking organizations having fiduciary powers in the U.S.) are regulated, supervised and examined by the institution's primary U.S. bank regulatory authority (federal or state), there is no need to apply additional standards measuring the financial condition or standing of the institution, as in the case of determining those institutions whose standby letter of credit obligations will be considered acceptable.

Section 4. Rules and Regulations

The Commissioner may adopt rules and regulations implementing the provisions of this law.

Drafting Note: It is recognized that credit for reinsurance may also be affected by other sections of the enacting state's code, e.g., a statutory insolvency clause. It is recommended that states which do not have a statutory insolvency clause consider incorporating such a clause in their legislation.

Section 5. Reinsurance Agreements Affected

Sections 1 through 4 of this Act shall apply to all cessions after the effective date of this Act under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after the effective date of this statute.

Drafting Note: The enacting state may wish to provide a delay in the applicability greater than six months in order to allow time for the Insurance Commissioner to promulgate regulations, and to allow reinsurers to prepare and submit qualifying data.

Legislative History (All references are to the Proceedings of the NAIC).

1984 Proc. II 9, 29, 822, 836, 837-839 (adopted).

1986 Proc. I 9-10, 24, 799, 811, 812 (corrected).

1987 Proc. II 15, 24, 444-448, 832, 854, 856 (amended and reprinted).

1990 Proc. I 12-14, 851, 857-861 (amended at special plenary session September 1989 and reprinted).

1990 Proc. I 6, 30, 840, 872, 875-878 (technical amendments adopted at winter plenary and reprinted).

1990 Proc. II 7, 18, 748, 766, 780-783 (amended).