

17:22E-1 to 17:22E-23

LEGISLATIVE HISTORY CHECKLIST
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(Reinsurance--intermediaries)

NJSA: 17:22E-1 to 17:22E-23
LAWS OF: 1993 **CHAPTER:** 244
BILL NO: A85
SPONSOR(S) Augustine and other
DATE INTRODUCED: February 1, 1993
COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce
AMENDED DURING PASSAGE: No
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 Intermediary Model Act promulgated by National Association Insurance
Commissioners.

KBG:pp

P.L.1993, CHAPTER 244, approved August 9, 1993
1993 Assembly No. 85

1 AN ACT providing for the regulation of reinsurance
2 intermediaries.
3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:
6 1. As used in this act:
7 "Commissioner" means the Commissioner of Insurance.
8 "Controlling person" means a person which directly or
9 indirectly has the power to direct, or cause to be directed, the
10 management, control or activities of the reinsurance
11 intermediary.
12 "Insurer" means:
13 (1) A corporation, association, partnership, reciprocal
14 exchange, interinsurer, Lloyd's insurer, fraternal benefit society
15 or other person engaged in the business of insurance pursuant to
16 Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of
17 Title 17B of the New Jersey Statutes;
18 (2) A medical service corporation operating pursuant to
19 P.L.1940, c.74 (C.17:48A-1 et seq.);
20 (3) A hospital service corporation operating pursuant to
21 P.L.1938, c.366 (C.17:48-1 et seq.);
22 (4) A health service corporation operating pursuant to
23 P.L.1985, c.236 (C.17:48E-1 et seq.); and
24 (5) A dental service corporation operating pursuant to
25 P.L.1968, c.305 (C.17:48C-1 et seq.).
26 "Producer" means a person engaged in the business of an
27 insurance agent, insurance broker or insurance consultant
28 pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.).
29 "Reinsurance intermediary" means a reinsurance
30 intermediary-broker or a reinsurance intermediary-manager.
31 "Reinsurance intermediary-broker" means a person, other than
32 an officer or employee of the ceding insurer, which solicits,
33 negotiates or places reinsurance cessions or retrocessions on
34 behalf of a ceding insurer without the authority or power to bind
35 reinsurance on behalf of that insurer.
36 "Reinsurance intermediary-manager" means a person which
37 has authority to bind or manages all or part of the assumed
38 reinsurance business of a reinsurer, including the management of
39 a separate division, department or underwriting office, and acts
40 as an agent for that reinsurer whether known as a reinsurance
41 intermediary-manager, manager or other similar term, except
42 that the following persons shall not be considered a reinsurance
43 intermediary-manager, with respect to that reinsurer, for the
44 purposes of this act:

1 (1) An employee of the reinsurer;

2 (2) A United States manager of a United States branch of an
3 alien reinsurer;

4 (3) An underwriting manager which, pursuant to contract,
5 manages all or part of the reinsurance operations of the
6 reinsurer, is under common control with the reinsurer, subject to
7 P.L.1970, c.22 (C.17:27A-1 et seq.), and whose compensation is
8 not solely based on the volume of premiums written;

9 (4) The manager of a group, association, pool or organization
10 of insurers which engage in joint underwriting or joint reinsurance
11 and who are subject to examination by the insurance
12 commissioner or other similar regulatory officer of the state in
13 which the manager's principal business office is located;

14 (5) A licensed attorney-at-law who negotiates contracts or
15 provides general financial counsel provided no commission or
16 brokerage fee is provided.

17 "Reinsurer" means any person which engages in the activity of
18 insuring part or all of an insurance risk from an originating or
19 ceding insurer.

20 "To be in violation" means that a reinsurance intermediary, or
21 the insurer or reinsurer for which the reinsurance intermediary
22 was acting, failed to substantially comply with the provisions of
23 this act.

24 "Qualified United States financial institution" means an
25 institution that:

26 (1) Is organized, or in the case of a branch or agency office of
27 a foreign banking organization in the United States, licensed,
28 under the laws of the United States or any state thereof;

29 (2) Is regulated, supervised and examined by federal or state
30 authorities having regulatory authority over banks and trust
31 companies; and

32 (3) Has been determined by either the commissioner, or the
33 Securities Valuation Office of the National Association of
34 Insurance Commissioners, to meet such standards of financial
35 condition and standing as are considered necessary and
36 appropriate to regulate the quality of financial institutions whose
37 letters of credit will be acceptable to the commissioner.

38 2. a. No person shall act as a reinsurance intermediary-broker
39 or reinsurance intermediary-manager in this State unless licensed
40 as a producer in this State.

41 b. No insurer or reinsurer shall continue to utilize the services
42 of a reinsurance intermediary on and after the effective date of
43 this act unless utilization is in compliance with this act.

44 3. The commissioner may require a reinsurance
45 intermediary-manager to:

46 a. File a bond in an amount and from an insurer acceptable to
47 the commissioner for the protection of the reinsurer; and

48 b. Maintain an errors and omissions policy in an amount
49 acceptable to the commissioner.

50 4. a. The commissioner shall authorize a person to act as a
51 reinsurance intermediary if that person has complied with the
52 requirements of this act. Such authorization to a firm or
53 association shall authorize all the members of the firm or
54 association and any designated employees to act as reinsurance

1 intermediaries under the authorization, and all those persons shall
2 be named in the application and any supplements thereto. An
3 authorization to a corporation shall authorize all of the officers,
4 and any designated employees and directors thereof, to act as
5 reinsurance intermediaries on behalf of the corporation, and all
6 those persons shall be named in the application and any
7 supplements thereto.

8 b. If the applicant seeking authorization to act as a
9 reinsurance intermediary is a nonresident, the applicant, as a
10 condition precedent to receiving or holding such authorization,
11 shall designate the commissioner as agent for service of process;
12 and also shall furnish the commissioner with the name and
13 address of a resident of this State upon whom notices or orders of
14 the commissioner or process affecting such nonresident
15 reinsurance intermediary may be served. The person shall within
16 30 days notify the commissioner in writing of every change in its
17 designated agent for service of process, and such change shall not
18 become effective until acknowledged by the commissioner.

19 5. The commissioner may refuse to authorize a person to act
20 as a reinsurance intermediary if, in his judgment, the person,
21 anyone named on the application, or any member, principal,
22 officer or director of the applicant, is not trustworthy, or that
23 any controlling person of the applicant is not trustworthy to act
24 as a reinsurance intermediary, or that any of these persons have
25 given cause for revocation or suspension of that authorization, or
26 have failed to comply with any prerequisite for that
27 authorization. Upon written request therefor, the commissioner
28 shall furnish a summary of the basis for refusal of such
29 authorization, which document shall be privileged and not subject
30 to P.L.1963, c.73 (C.47:1A-1 et seq.).

31 6. Transactions between a reinsurance intermediary-broker
32 and the insurer it represents in that capacity shall only be
33 entered into pursuant to a written contract, specifying the
34 responsibilities of each party. The contract shall, at a minimum,
35 provide that:

36 a. The insurer may terminate the reinsurance
37 intermediary-broker's authority at any time;

38 b. The reinsurance intermediary-broker shall render accounts
39 to the insurer accurately detailing all material transactions,
40 including information necessary to support all commissions,
41 charges and other fees received by, or owing to, the reinsurance
42 intermediary-broker, and remit all funds due to the insurer within
43 30 days of receipt;

44 c. All funds collected for the insurer's account shall be held
45 by the reinsurance intermediary-broker in a fiduciary capacity in
46 a qualified United States financial institution;

47 d. The reinsurance intermediary-broker shall comply with
48 sections 7 and 8 of this act;

49 e. The reinsurance intermediary-broker shall comply with the
50 written standards established by the insurer for the cession or
51 retrocession of all risks; and

52 f. The reinsurance intermediary-broker shall disclose to the
53 insurer any relationship with any reinsurer to which business will
54 be ceded or retroceded.

- 1 7. For at least 10 years after the expiration of each contract
2 of reinsurance transacted by the reinsurance
3 intermediary-broker, the reinsurance intermediary-broker shall
4 keep a complete record for each transaction showing:
- 5 a. The type of contract, limits, underwriting restrictions,
6 classes or risks and territory;
 - 7 b. Period of coverage, including effective and expiration
8 dates, cancellation provisions and notice required of cancellation;
 - 9 c. Reporting and settlement requirements of balances;
 - 10 d. Rate used to compute the reinsurance premium;
 - 11 e. Names and addresses of assuming reinsurers;
 - 12 f. Rates of all reinsurance commissions, including the
13 commissions on any retrocessions handled by the reinsurance
14 intermediary-broker;
 - 15 g. Related correspondence and memoranda;
 - 16 h. Proof of placement;
 - 17 i. Details regarding retrocessions handled by the reinsurance
18 intermediary-broker, including the identity of retrocessionaires
19 and percentage of each contract assumed or ceded;
 - 20 j. Financial records, including, but not limited to, premium and
21 loss accounts; and
 - 22 k. When the reinsurance intermediary-broker procures a
23 reinsurance contract on behalf of a ceding licensed insurer:
 - 24 (1) Directly from any assuming reinsurer, written evidence that
25 the assuming reinsurer has agreed to assume the risk; or
 - 26 (2) If placed through a representative of the assuming
27 reinsurer, other than an employee, written evidence that the
28 assuming reinsurer has delegated binding authority to the
29 representative.
- 30 8. The insurer shall have access and the right to copy and audit
31 all accounts and records maintained by the reinsurance
32 intermediary-broker related to its business in a form usable by
33 the insurer.
- 34 9. An insurer shall not engage the services of any person to act
35 as a reinsurance intermediary-broker on its behalf unless that
36 person is authorized pursuant to section 4 of this act.
- 37 10. An insurer shall not employ an individual who is employed
38 by a reinsurance intermediary-broker with which it transacts
39 business, unless the reinsurance intermediary-broker is under
40 common control with the insurer and subject to P.L.1970, c.22
41 (C.17:27A-1 et seq.).
- 42 11. A reinsurance intermediary-broker shall annually send a
43 copy of statements of its financial condition to each insurer with
44 which it transacts business.
- 45 12. Transactions between a reinsurance intermediary-manager
46 and the reinsurer it represents in that capacity shall only be
47 entered into pursuant to a written contract, specifying the
48 responsibilities of each party, which shall be approved by the
49 reinsurer's board of directors. At least 30 days before the
50 reinsurer assumes or cedes business through a reinsurance
51 intermediary-manager, a true copy of the approved contract shall
52 be filed with the commissioner for approval. The contract shall,
53 at a minimum, provide that:
- 54 a. The reinsurer may immediately terminate the contract for

1 cause upon written notice to the reinsurance
2 intermediary-manager. The reinsurer may suspend the authority
3 of the reinsurance intermediary-manager to assume or cede
4 business during the pendency of any dispute regarding the cause
5 for termination;

6 b. The reinsurance intermediary-manager shall render
7 accounts to the reinsurer accurately detailing all material
8 transactions, including information necessary to support all
9 commissions, charges and other fees received by, or owing to, the
10 reinsurance intermediary-manager, and remit all funds due under
11 the contract to the reinsurer on not less than a monthly basis;

12 c. All funds collected for the reinsurer's account shall be held
13 by the reinsurance intermediary-manager in a fiduciary capacity
14 in a qualified United States financial institution. The reinsurance
15 intermediary-manager shall not retain more than three months'
16 estimated claims payments and allocated loss adjustment
17 expenses. The reinsurance intermediary-manager shall maintain
18 a separate bank account for each reinsurer that it represents;

19 d. For at least 10 years after the expiration of each contract
20 of reinsurance transacted by the reinsurance
21 intermediary-manager, the reinsurance intermediary-manager
22 shall keep a complete record for each transaction showing:

23 (1) The type of contract, limits, underwriting restrictions,
24 classes or risks and territory;

25 (2) Period of coverage, including effective and expiration
26 dates, cancellation provisions and notice required of cancellation,
27 and disposition of outstanding reserves on covered risks;

28 (3) Reporting and settlement requirements of balances;

29 (4) Rate used to compute the reinsurance premium;

30 (5) Names and addresses of reinsurers;

31 (6) Rates of all reinsurance commissions, including the
32 commissions on any retrocessions handled by the reinsurance
33 intermediary-manager;

34 (7) Related correspondence and memoranda;

35 (8) Proof of placement;

36 (9) Details regarding retrocessions handled by the reinsurance
37 intermediary-manager, as permitted by section 17 of this act,
38 including the identity of retrocessionaires and percentage of each
39 contract assumed or ceded;

40 (10) Financial records, including, but not limited to, premium
41 and loss accounts; and

42 (11) When the reinsurance intermediary-manager places a
43 reinsurance contract on behalf of a ceding insurer:

44 (a) Directly from any assuming reinsurer, written evidence that
45 the assuming reinsurer has agreed to assume the risk; or

46 (b) If placed through a representative of the assuming
47 reinsurer, other than an employee, written evidence that such
48 reinsurer has delegated binding authority to the representative;

49 e. The reinsurer shall have access and the right to copy all
50 accounts and records maintained by the reinsurance
51 intermediary-manager related to its business in a form usable by
52 the reinsurer;

53 f. The contract shall not be assigned in whole or in part by the
54 reinsurance intermediary-manager;

- 1 g. The reinsurance intermediary-manager shall comply with
2 the written underwriting and rating standards established by the
3 insurer for the acceptance, rejection or cession of all risks;
- 4 h. The rates, terms and purposes of commissions, charges and
5 other fees which the reinsurance intermediary-manager may levy
6 against the reinsurer shall be set forth;
- 7 i. If the contract permits the reinsurance
8 intermediary-manager to settle claims on behalf of the reinsurer:
- 9 (1) All claims shall be reported to the reinsurer in a timely
10 manner;
- 11 (2) A copy of the claim file shall be sent to the reinsurer at its
12 request or as soon as it becomes known that the claim:
- 13 (a) Has the potential to exceed the lesser of an amount
14 determined by the commissioner or the limit set by the reinsurer;
- 15 (b) Involves a coverage dispute;
- 16 (c) May exceed the reinsurance intermediary-manager's claims
17 settlement authority;
- 18 (d) Is open for more than six months; or
- 19 (e) Is closed by payment of the lesser of an amount set by the
20 commissioner or an amount set by the reinsurer;
- 21 (3) All claims files shall be the joint property of the reinsurer
22 and reinsurance intermediary-manager. However, upon an order
23 of liquidation of the reinsurer, the claims files shall become the
24 sole property of the reinsurer or its estate, except that the
25 reinsurance intermediary-manager shall have reasonable access
26 to and the right to copy the files on a timely basis;
- 27 (4) Any settlement authority granted to the reinsurance
28 intermediary-manager may be terminated for cause upon the
29 reinsurer's written notice to the reinsurance
30 intermediary-manager or upon the termination of the contract.
31 The reinsurer may suspend the settlement authority during the
32 pendency of the dispute regarding the cause of termination;
- 33 j. If the contract provides for a sharing of interim profits by
34 the reinsurance intermediary-manager, those interim profits shall
35 not be paid until one year after the end of each underwriting
36 period for property business and five years after the end of each
37 underwriting period for casualty business, or a later period set by
38 the commissioner for specified lines of insurance, and not until
39 the adequacy of reserves on remaining claims has been verified
40 pursuant to section 16 of this act;
- 41 k. The reinsurance intermediary-manager shall annually
42 provide the reinsurer with a statement of its financial condition
43 prepared by an independent certified public accountant;
- 44 l. The reinsurer shall at least biannually conduct a procedural
45 audit of the underwriting and claims processing operations of the
46 reinsurance intermediary-manager;
- 47 m. The reinsurance intermediary-manager shall disclose to the
48 reinsurer any relationship it has with any insurer prior to ceding
49 or assuming any business with the insurer pursuant to a contract;
- 50 n. Within the scope of its actual or apparent authority, the
51 acts of the reinsurance intermediary-manager shall be deemed to
52 be the acts of the reinsurer on whose behalf it is acting; and
- 53 o. Any addendum to the contract shall be approved by the
54 reinsurer's board of directors and shall be filed with the

1 commissioner within 30 days of approval by the board of directors
2 for the commissioner's approval. No addendum to the contract
3 shall take effect until approved by the commissioner.

4 13. The reinsurance intermediary-manager shall not:

5 a. Cede retrocessions on behalf of the reinsurer, except that
6 the reinsurance intermediary-manager may cede facultative
7 retrocessions pursuant to obligatory facultative agreements if the
8 contract with the reinsurer contains reinsurance underwriting
9 guidelines for such retrocessions. The guidelines shall include a
10 list of reinsurers with which such automatic agreements are in
11 effect, and for each such reinsurer, the coverages and amounts or
12 percentages that may be reinsured, and commission schedules;

13 b. Commit the reinsurer to participate in reinsurance
14 syndicates;

15 c. Appoint any producer without assuring that the producer is
16 lawfully licensed to transact the type of reinsurance for which he
17 is appointed;

18 d. Without prior approval of the reinsurer, pay, or commit the
19 reinsurer to pay, a claim, net of retrocessions, that exceeds the
20 lesser of an amount specified by the reinsurer or one percent of
21 the reinsurer's policyholders' surplus as of December 31 of the
22 last complete calendar year;

23 e. Collect any payment from a retrocessionaire, or commit the
24 reinsurer to any claim settlement with a retrocessionaire,
25 without prior approval of the reinsurer. If prior approval is given,
26 a report shall be promptly forwarded to the reinsurer;

27 f. Jointly employ an individual who is employed by the
28 reinsurer unless the reinsurance intermediary-manager is under
29 common control with the reinsurer subject to P.L.1970, c.22
30 (C.17:27A-1 et seq.); and

31 g. Appoint a sub-reinsurance intermediary-manager.

32 14. A reinsurer shall not engage the services of any person to
33 act as a reinsurance intermediary-manager on its behalf unless
34 such person is authorized pursuant to section 4 of this act.

35 15. A reinsurance intermediary-manager shall annually send a
36 copy of statements of its financial condition to each reinsurer
37 with which it transacts business. Such statements shall be
38 prepared by an independent certified public accountant in a form
39 acceptable to the commissioner.

40 16. If a reinsurance intermediary-manager establishes loss
41 reserves, the reinsurer shall annually, or more frequently at the
42 commissioner's discretion, obtain the opinion of an actuary
43 attesting to the adequacy of loss reserves established for losses
44 incurred and outstanding on business produced by the reinsurance
45 intermediary-manager. The loss reserve opinion shall be in the
46 format and otherwise satisfy all requirements established by the
47 commissioner for loss reserve opinions required to be submitted
48 by licensed insurers in this State. This opinion shall be in addition
49 to any other loss reserve certification required in this State.

50 17. Binding authority for all retrocessional contracts or
51 participation in reinsurance syndicates shall rest with an officer
52 of the reinsurer who shall not be affiliated with the reinsurance
53 intermediary-manager.

54 18. Within 15 days of termination of a contract with a

1 reinsurance intermediary-manager, the reinsurer shall provide
2 written notification of that termination to the commissioner.
3 Notice of termination shall be on a form prescribed by the
4 commissioner and shall indicate the date of termination and the
5 reason therefor. Agency appointment shall not terminate until
6 notice of termination has been received by the commissioner.

7 19. A reinsurer shall not appoint to its board of directors any
8 officer, director, employee, controlling shareholder or
9 subproducer of its reinsurance intermediary-manager. This
10 section shall not apply to relationships governed by P.L.1970, c.22
11 (C.17:27A-1 et seq.) or, if applicable, any laws governing business
12 transacted by producer-controlled property and casualty insurers
13 in this State.

14 20. A reinsurance intermediary shall be subject to examination
15 by the commissioner. The commissioner shall have access to all
16 books, bank accounts and records of the reinsurance intermediary
17 in a form usable by the commissioner. A reinsurance
18 intermediary-manager may be examined as if it were the
19 reinsurer.

20 21. a. If the commissioner finds, after notice and opportunity
21 for a hearing, that a reinsurance intermediary, insurer or
22 reinsurer is in violation of any provision of this act, the
23 commissioner may refuse to issue or renew its license, or may
24 revoke or suspend its license.

25 b. In addition or as an alternative to any other penalty, the
26 commissioner may:

27 (1) Impose a penalty of not more than \$5,000 for a first
28 violation, and not more than \$10,000 for each subsequent
29 violation, and in appropriate circumstances order restitution of
30 moneys owed to any person and reimbursement of the costs of
31 investigation and prosecution;

32 (2) If a violation was committed by the reinsurance
33 intermediary, order the restitution to the insurer, reinsurer or
34 rehabilitator or liquidator of the insurer or reinsurer for the net
35 losses incurred by the insurer or reinsurer attributable to such
36 violation.

37 c. If the commissioner finds that the interests of the public
38 require that immediate action be taken prior to completion of the
39 hearing, the making of a determination and the entry of a final
40 order, he may enter an appropriate order to be effective pending
41 completion of the hearing and entry of a final order. These
42 orders may be entered on ex parte proofs if the proofs indicate
43 that the commissioner's withholding of any action until
44 completion of a full hearing will be harmful to the public
45 interest. Orders issued pursuant to this subsection shall be
46 subject to an application to vacate upon 10 days' notice, and a
47 preliminary hearing on the ex parte order shall be held in any
48 event within 20 days after it is entered. In the alternative, or in
49 addition, the commissioner is authorized to institute a proceeding
50 in the Superior Court, to be conducted in a summary manner, for
51 an injunction against specified acts or conduct in aid of the
52 proceedings pending before him, including temporary injunctions
53 and interim restraints.

54 d. Nothing contained in this section shall affect the right of

1 the commissioner to impose any other penalties provided by the
2 laws of this State.

3 22. Nothing contained in this act is intended to or shall in any
4 manner limit or restrict the rights of policyholders, claimants,
5 creditors or other third parties or confer any rights to such
6 persons.

7 23. The commissioner may promulgate rules and regulations
8 pursuant to the "Administrative Procedure Act," P.L.1988, c.410
9 (C.52:14B-1 et seq.), as may be necessary to effectuate the
10 purposes of this act.

11 24. This act shall take effect on the 180th day following
12 enactment.

13

14

15

STATEMENT

16

17 This bill provides for the regulation of reinsurance
18 intermediaries. Reinsurance intermediaries are persons or firms
19 who arrange for purchase of reinsurance for primary carriers.

20 This bill, based on a model law by the National Association of
21 Insurance Commissioners, provides regulatory procedures to
22 ensure reinsurance intermediaries have requisite insurance
23 knowledge and to enable the department to monitor their actions.

24

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9 (C.52:14B-1 et seq.), as may be necessary to effectuate the
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Sponsor STATEMENT

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28 _____
Provides for the regulation of reinsurance intermediaries.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 85

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably Assembly Bill No. 85.

This bill provides for the regulation of reinsurance intermediaries. Reinsurance intermediaries are persons or firms who arrange for purchase of reinsurance for primary carriers.

This bill, based on a model law by the National Association of Insurance Commissioners, provides regulatory procedures to ensure reinsurance intermediaries have requisite insurance knowledge and to enable the department to monitor their actions.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 85

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 85.

This bill provides for the regulation of reinsurance intermediaries. Reinsurance intermediaries are persons or firms who arrange for purchase of reinsurance for primary carriers.

This bill, based on a model law by the National Association of Insurance Commissioners, provides regulatory procedures to ensure reinsurance intermediaries have requisite insurance knowledge and to enable the department to monitor their actions.

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OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

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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.

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REINSURANCE INTERMEDIARY MODEL ACT

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Section 1. Short Title

This Act may be cited as the Reinsurance Intermediary Act.

Section 2. Definitions

As used in this Act:

- A. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.
- B. "Controlling Person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.
- C. "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.
- D. "Licensed Producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.
- E. "Reinsurance Intermediary" means a reinsurance intermediary - broker or a reinsurance intermediary - manager as these terms are defined in Subsections F and G of this section.
- F. "Reinsurance Intermediary - Broker" (RB) means any person, other than an officer or employee of the ceding insurer, "firm," association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.
- G. "Reinsurance Intermediary - Manager" (RM) means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department or underwriting office) and acts as an agent for such reinsurer whether known as a RM, manager or other similar term. Notwithstanding the above, the following persons shall not be considered a RM, with respect to such reinsurer, for the purposes of this Act:

- (1) An employee of the reinsurer;

- (2) A U.S. Manager of the United States branch of an alien reinsurer;
 - (3) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and whose compensation is not based on the volume of premiums written.
 - (4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the [Insurance Commissioner] of the state in which the manager's principal business office is located.
- H. "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.
- I. "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this Act.
- J. Qualified U. S. Financial Institutions

For purposes of this Act, 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.

Section 3. Licensure

- A. No person, firm, association or corporation shall act as a RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:
- (1) In this state, unless such RB is a licensed producer in this state; or
 - (2) In another state, unless such RB is a licensed producer in this state or another state having a law substantially similar to this law or such RB is licensed in this state as a nonresident reinsurance intermediary.
- B. No person, firm, association or corporation shall act as a RM:
- (1) For a reinsurer domiciled in this state, unless such RM is a licensed producer in this state;
 - (2) In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such RM is a licensed producer in this state;

- (3) In another state for a nondomestic insurer, unless such RM is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

C. The Commissioner may require a RM subject to Subsection B to:

- (1) File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

Drafting Note: It is contemplated that one bond per reinsurer represented would be required.

- (2) Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

D. (1) The Commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this Act. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

- (2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the Commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this Act for designation of service of process upon unauthorized insurers; and also shall furnish the Commissioner with the name and address of a resident of this state upon whom notices or orders of the Commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the Commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commissioner.

E. The Commissioner may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the Commissioner will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to [cite applicable freedom of information law].

F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

Section 4. Required Contract Provisions - Reinsurance Intermediary - Brokers

Transactions between a RB and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

- A. The insurer may terminate the RB's authority at any time.
- B. The RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the RB, and remit all funds due to the insurer within thirty (30) days of receipt.

- C. All funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank which is a qualified U.S. financial institution as defined herein.
- D. The RB will comply with Section 5 of this Act.
- E. The RB will comply with the written standards established by the insurer for the cession or retrocession of all risks.
- F. The RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 5. Books and Records - Reinsurance Intermediary Brokers

- A. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RB, the RB will keep a complete record for each transaction showing:
 - (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;
 - (3) Reporting and settlement requirements of balances;
 - (4) Rate used to compute the reinsurance premium;
 - (5) Names and addresses of assuming reinsurers;
 - (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB;
 - (7) Related correspondence and memoranda;
 - (8) Proof of placement;
 - (9) Details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (10) Financial records, including but not limited to, premium and loss accounts; and
 - (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
 - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

Drafting Note: States may wish to bifurcate this subsection, shortening the required retention period for contracts limited to first-party property coverages and lengthening the period for certain third-party liability coverages (e.g., medical malpractice).

- B. The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

Section 6. Duties of Insurers Utilizing the Services of a Reinsurance Intermediary - Broker

- A. An insurer shall not engage the services of any person, firm, association or corporation to act as a RB on its behalf unless such person is licensed as required by Section 3A of this Act.
- B. An insurer may not employ an individual who is employed by a RB with which it transacts business, unless such RB is under common control with the insurer and subject to the Holding Company Act.
- C. The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

Section 7. Required Contract Provisions - Reinsurance Intermediary - Managers

Transactions between a RM and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's Board of Directors. At least thirty (30) days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the Commissioner for approval. The contract shall, at a minimum, provide that:

- A. The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.
- B. The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.
- C. All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank which is a qualified U.S. financial institution as defined herein. The RM may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents.
- D. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transactions showing:
 - (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
 - (3) Reporting and settlement requirements of balances;
 - (4) Rate used to compute the reinsurance premium;
 - (5) Names and addresses of reinsurers;
 - (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
 - (7) Related correspondence and memoranda;
 - (8) Proof of placement;

- (9) Details regarding retrocessions handled by the RM, as permitted by Section 9D of this Act, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (10) Financial records, including but not limited to, premium and loss accounts; and
- (11) When the RM places a reinsurance contract on behalf of a ceding insurer:
 - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

Drafting Note: States may wish to bifurcate this subsection, shortening the required retention period for contracts limited to first-party property coverages and lengthening the period for certain third-party liability coverages (e.g., medical malpractice).

- E. The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.
- F. The contract cannot be assigned in whole or in part by the RM.
- G. The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.
- H. Rates, terms and purposes of commissions, charges and other fees which the RM may levy against the reinsurer are set forth.
- I. If the contract permits the RM to settle claims on behalf of the reinsurer:
 - (1) All claims will be reported to the reinsurer in a timely manner;
 - (2) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (a) Has the potential to exceed the lesser of an amount determined by the Commissioner or the limit set by the reinsurer;
 - (b) Involves a coverage dispute;
 - (c) May exceed the RM's claims settlement authority;
 - (d) Is open for more than six (6) months; or
 - (e) Is closed by payment of the lesser of an amount set by the Commissioner or an amount set by the reinsurer;
 - (3) All claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis;
 - (4) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

- J. If the contract provides for a sharing of interim profits by the RM, that such interim profits will not be paid until one year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business (or a later period set by the Commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 9C of this Act.
- K. The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.
- L. The reinsurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the RM.
- M. The RM will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.
- N. Within the scope of its actual or apparent authority the acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Section 8. Prohibited Acts

The RM shall not:

- A. Cede retrocessions on behalf of the reinsurer, except that the RM may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- B. Commit the reinsurer to participate in reinsurance syndicates.
- C. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.
- D. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.
- E. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.
- F. Jointly employ an individual who is employed by the reinsurer unless such RM is under common control with the reinsurer subject to the Holding Company Act.
- G. Appoint a sub-RM.

Section 9. Duties of Reinsurers Utilizing the Services of a Reinsurance Intermediary - Manager

- A. A reinsurer shall not engage the services of any person, firm, association or corporation to act as a RM on its behalf unless such person is licensed as required by Section 3B of this Act.
- B. The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which such reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the Commissioner.

- C. If a RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.
- D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.
- E. Within thirty (30) days of termination of a contract with a RM, the reinsurer shall provide written notification of such termination to the Commissioner.
- F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by the Holding Company Act or, if applicable, the Broker Controlled Insurer Act.

Section 10. Examination Authority

- A. A reinsurance intermediary shall be subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commissioner.
- B. A RM may be examined as if it were the reinsurer.

Section 11. Penalties and Liabilities

- A. A reinsurance intermediary, insurer or reinsurer found by the Commissioner, after a hearing conducted in accordance with [insert appropriate citation to state administrative code], to be in violation of any provision[s] of this Act, shall:
 - (1) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars (\$5,000);
 - (2) Be subject to revocation or suspension of its license; and
 - (3) If a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.
- B. The decision, determination or order of the Commissioner pursuant to Subsection A of this section shall be subject to judicial review pursuant to [insert appropriate citation to state administrative procedure act and state insurance law].
- C. Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided in the insurance law.
- D. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

Section 12. Rules and Regulations

The Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this Act.

Drafting Note: This section may be omitted if state's insurance law contains general rule-making provision.

Section 13. Effective Date

This Act shall take effect on [insert date]. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after [insert date] unless utilization is in compliance with this Act.

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

1990 Proc. I 6, 30, 840, 844-850, 870-872 (adopted).

1990 Proc. II 7, 17-18, 748, 766, 770-775 (amended and reprinted).