

**17:51B-1 & 17:51B-2, 17:51B-4  
LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2021                    **CHAPTER:** 354

**NJSA:** 17:51B-1 & 17:51B-2, 17:51B-4 (Revises current law to incorporate provisions of bilateral agreement between United States and European Union on prudential measures regarding insurance and reinsurance.)

**BILL NO:** S4213                (Substituted for A6169)

**SPONSOR(S)** Pou, Nellie and others

**DATE INTRODUCED:** 12/2/2021

**COMMITTEE:**                **ASSEMBLY:** ---

**SENATE:** Commerce

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                **ASSEMBLY:** 12/20/2021

**SENATE:** 12/20/2021

**DATE OF APPROVAL:** 1/10/2022

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Introduced bill enacted) Yes

**S4213**

**INTRODUCED BILL (INCLUDES SPONSOR’S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A6169**

**INTRODUCED BILL (INCLUDES SPONSOR’S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** No

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**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH/JA



P.L. 2021, CHAPTER 354, *approved January 10, 2022*

Senate, No. 4213

1 AN ACT concerning credit for reinsurance and amending P.L.1993,  
2 c.243.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 1 of P.L.1993, c.243 (C.17:51B-1) is amended to read  
8 as follows:

9 1. For purposes of this act:

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Insurer" means:

13 (1) Any corporation, association, partnership, reciprocal  
14 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or  
15 other person engaged in the business of insurance pursuant to Subtitle  
16 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the  
17 New Jersey Statutes;

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

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

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

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

26 "NAIC" means the National Association of Insurance  
27 Commissioners.

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 thereof and has been granted authority to operate with fiduciary  
2 powers; and (b) is regulated, supervised and examined by federal or  
3 state authorities having regulatory authority over banks and trust  
4 companies.

5 (cf: P.L.1993, c.243, s.1)

6

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

9 2. Credit for reinsurance ceded by an insurer which is domiciled  
10 in New Jersey, or which is either licensed in New Jersey or eligible  
11 to write surplus lines insurance in New Jersey and which in either  
12 case is domiciled in a state or country which does not employ  
13 standards regarding credit for reinsurance substantially similar, as  
14 determined by the commissioner, to those applicable under this act,  
15 shall be allowed as either an asset or a deduction from liability only  
16 when:

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

19 b. The reinsurance is ceded to an assuming insurer which is  
20 accredited as a reinsurer in this State. An accredited reinsurer is one  
21 which:

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

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

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

30 (4) Files annually with the commissioner a copy of its annual  
31 statement filed with the insurance department or other regulatory  
32 authority of its state of domicile and a copy of its most recent audited  
33 financial statement; and either:

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

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

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

43 (6) Provides any additional information, which may include, but  
44 may not be limited to, information regarding the concentration of the  
45 insurer's exposures, geographic or otherwise, and satisfies such  
46 additional requirements as the commissioner deems necessary to  
47 ensure that the particular insurer's condition and methods of

1 operation are not such as would render its operations hazardous to  
2 the public or policyholders in this State.

3 No credit shall be allowed a ceding licensed insurer or  
4 unauthorized eligible surplus lines insurer if the assuming insurer's  
5 accreditation has been revoked by the commissioner after notice and  
6 hearing; or

7 c. The reinsurance is ceded to an assuming insurer which is  
8 domiciled and licensed in, or in the case of a United States branch of  
9 an assuming alien insurer, is entered through, a state which employs  
10 standards regarding credit for reinsurance substantially similar to  
11 those applicable under this act, as determined by the commissioner,  
12 and that assuming insurer or United States branch of an assuming  
13 alien insurer:

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

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

18 (3) Provides any additional information, which may include, but  
19 may not be limited to, information regarding the concentration of the  
20 insurer's exposures, geographic or otherwise, and satisfies such  
21 additional requirements as the commissioner deems necessary to  
22 ensure that the particular insurer's condition and methods of  
23 operation are not such as would render its operations hazardous to  
24 the public or policyholders in this State; except that the requirement  
25 of paragraph (1) of this subsection shall not apply to reinsurance  
26 ceded and assumed pursuant to pooling arrangements among insurers  
27 in the same holding company system; or

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

44 (1) In the case of a single assuming insurer, the trust shall consist  
45 of a trusteed account representing the assuming insurer's liabilities  
46 attributable to business written in the United States and in addition,  
47 the assuming insurer shall maintain a trusteed surplus of not less than  
48 \$20,000,000.

1 (2) In the case of a group of insurers, which group includes  
2 individual unincorporated underwriters, the trust shall consist of a  
3 trustee account representing the group's liabilities attributable to  
4 business written in the United States and, in addition, the group shall  
5 maintain a trustee surplus of which not less than \$100,000,000 shall  
6 be held jointly for the benefit of United States ceding insurers of any  
7 member of the group; and the group shall make available to the  
8 commissioner an annual certification of the solvency of each  
9 underwriter for the fiscal period immediately preceding, which shall  
10 not be less than one year, by the group's domiciliary regulator and its  
11 independent certified public accountant.

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

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

- 1     e. (1) Credit shall be allowed when the reinsurance is ceded to an  
2 assuming insurer meeting each of the conditions set forth below:
- 3     (a) The assuming insurer shall have its head office or be  
4 domiciled in, as applicable, and be licensed in a reciprocal  
5 jurisdiction. “Reciprocal jurisdiction” shall mean a jurisdiction that  
6 meets one of the following:
- 7         (i) A non-U.S. jurisdiction that is subject to an in-force covered  
8 agreement with the United States, each within its legal authority, or,  
9 in the case of a covered agreement between the United States and  
10 European Union, is a member state of the European Union. For  
11 purposes of this subsection, a “covered agreement” is an agreement  
12 entered into pursuant to sections 313 and 314 of the Dodd-Frank Wall  
13 Street Reform and Consumer Protection Act (31 U.S.C. ss. 313-314)  
14 that is currently in effect or in a period of provisional application and  
15 addresses the elimination, under specified conditions, of collateral  
16 requirements as a condition for entering into any reinsurance  
17 agreement with a ceding insurer domiciled in this State or for  
18 allowing the ceding insurer to recognize credit for reinsurance;
- 19         (ii) A U.S. jurisdiction that meets the requirements for  
20 accreditation under the NAIC financial standards and accreditation  
21 program; or
- 22         (iii) A qualified jurisdiction, as determined by the commissioner  
23 pursuant to paragraph g. of this section, which is not otherwise  
24 described in subsubparagraphs (i) or (ii) of this subparagraph and  
25 which meets certain additional requirements, consistent with the  
26 terms and conditions of in-force covered agreements, as specified by  
27 the commissioner in regulation.
- 28     (b) The assuming insurer shall have and maintain, on an ongoing  
29 basis, minimum capital and surplus, or its equivalent, calculated  
30 according to the methodology of its domiciliary jurisdiction, in an  
31 amount to be set forth in regulation. If the assuming insurer is an  
32 association, including incorporated and individual unincorporated  
33 underwriters, it shall have and maintain, on an ongoing basis,  
34 minimum capital and surplus equivalents (net of liabilities),  
35 calculated according to the methodology applicable in its domiciliary  
36 jurisdiction, and a central fund containing a balance in amounts to be  
37 set forth in regulation.
- 38     (c) The assuming insurer shall have and maintain, on an ongoing  
39 basis, a minimum solvency or capital ratio, as applicable, which will  
40 be set forth in regulation. If the assuming insurer is an association,  
41 including incorporated and individual unincorporated underwriters,  
42 it shall have and maintain, on an ongoing basis, a minimum solvency  
43 or capital ratio in the reciprocal jurisdiction where the assuming  
44 insurer has its head office or is domiciled, as applicable, and is also  
45 licensed.
- 46     (d) The assuming insurer shall agree and provide adequate  
47 assurance to the commissioner, in a form specified by the  
48 commissioner pursuant to regulation, as follows:



- 1     (i) The assuming insurer shall provide prompt written notice and  
2 explanation to the commissioner if it falls below the minimum  
3 requirements set forth in subparagraphs (b) or (c) of this paragraph,  
4 or if any regulatory action is taken against it for serious  
5 noncompliance with applicable law;
- 6     (ii) The assuming insurer shall consent in writing to the  
7 jurisdiction of the courts of this State and to the appointment of the  
8 commissioner as agent for service of process. The commissioner may  
9 require that consent for service of process be provided to the  
10 commissioner and included in each reinsurance agreement. Nothing  
11 in this provision shall limit, or in any way alter, the capacity of parties  
12 to a reinsurance agreement to agree to alternative dispute resolution  
13 mechanisms, except to the extent those agreements are unenforceable  
14 under applicable insolvency or delinquency laws;
- 15     (iii) The assuming insurer shall consent in writing to pay all final  
16 judgments, wherever enforcement is sought, obtained by a ceding  
17 insurer or its legal successor, that have been declared enforceable in  
18 the jurisdiction where the judgment was obtained;
- 19     (iv) Each reinsurance agreement shall include a provision requiring  
20 the assuming insurer to provide security in an amount equal to 100  
21 percent of the assuming insurer's liabilities attributable to  
22 reinsurance ceded pursuant to that agreement if the assuming insurer  
23 resists enforcement of a final judgment that is enforceable under the  
24 law of the jurisdiction in which it was obtained or a properly  
25 enforceable arbitration award, whether obtained by the ceding insurer  
26 or by its legal successor on behalf of its resolution estate; and
- 27     (v) The assuming insurer shall confirm that it is not presently  
28 participating in any solvent scheme of arrangement which involves  
29 this State's ceding insurers, and agree to notify the ceding insurer and  
30 the commissioner and to provide security in an amount equal to 100  
31 percent of the assuming insurer's liabilities to the ceding insurer,  
32 should the assuming insurer enter into a solvent scheme of  
33 arrangement. The security shall be in a form consistent with the  
34 provisions of subsection g. of section 2 of P.L. , c. (C. )  
35 (pending before the Legislature as this bill) and section 3 of  
36 P.L.1993, c.243 (C.17:51B-3) and as specified by the commissioner  
37 in regulation.
- 38     (e) The assuming insurer or its legal successor shall provide, if  
39 requested by the commissioner, on behalf of itself and any legal  
40 predecessors, certain documentation to the commissioner, as  
41 specified by the commissioner in regulation.
- 42     (f) The assuming insurer shall maintain a practice of prompt  
43 payment of claims under reinsurance agreements, pursuant to criteria  
44 set forth in regulation.
- 45     (g) The assuming insurer's supervisory authority shall confirm to  
46 the commissioner on an annual basis, as of the preceding December  
47 31 or at the annual date otherwise statutorily reported to the

- 1 reciprocal jurisdiction, that the assuming insurer complies with the  
2 requirements set forth in subparagraphs (b) and (c) of this paragraph.
- 3 (h) Nothing in this section precludes an assuming insurer from  
4 providing the commissioner with information on a voluntary basis.
- 5 (2) The commissioner shall create and publish, in a timely  
6 manner, a list of reciprocal jurisdictions.
- 7 (a) A list of reciprocal jurisdictions is published through the  
8 NAIC committee process. The commissioner's list shall include any  
9 reciprocal jurisdiction as defined under subparagraph (a) of  
10 paragraph (1) of this subsection, and shall consider any other  
11 reciprocal jurisdiction included on the NAIC list. The commissioner  
12 may approve a jurisdiction that does not appear on the NAIC list of  
13 reciprocal jurisdictions in accordance with criteria to be developed  
14 through regulations issued by the commissioner.
- 15 (b) The commissioner may remove a jurisdiction from the list of  
16 reciprocal jurisdictions upon a determination that the jurisdiction no  
17 longer meets the requirements of a reciprocal jurisdiction, in  
18 accordance with a process set forth in regulations issued by the  
19 commissioner, except that the commissioner shall not remove from  
20 the list a reciprocal jurisdiction as defined under subparagraphs  
21 (i) and (ii) of subparagraph (a) of paragraph (1) of this subsection.  
22 Upon removal of a reciprocal jurisdiction from this list, credit for  
23 reinsurance ceded to an assuming insurer which has its home office  
24 or is domiciled in that jurisdiction shall be allowed, if otherwise  
25 allowed pursuant to P.L.1993, c.243 (C.17:51B-1 et al.).
- 26 (3) The commissioner shall create and publish a list of assuming  
27 insurers that have satisfied the conditions set forth in this subsection  
28 and to which cessions shall be granted credit in accordance with this  
29 subsection. The commissioner may add an assuming insurer to the  
30 list if an NAIC accredited jurisdiction has added an assuming insurer  
31 to a list of assuming insurers or if, upon initial eligibility, the  
32 assuming insurer submits the information to the commissioner as  
33 required under subparagraph (d) of paragraph (1) of this subsection  
34 and complies with any additional requirements that the commissioner  
35 may impose by regulation, except to the extent that the requirements  
36 conflict with an applicable covered agreement.
- 37 (4) If the commissioner determines that an assuming insurer no  
38 longer meets one or more of the requirements under this subsection,  
39 the commissioner may revoke or suspend the eligibility of the  
40 assuming insurer for recognition under this subsection in accordance  
41 with procedures set forth in regulation.
- 42 (a) While the eligibility of an assuming insurer is suspended, no  
43 reinsurance agreement issued, amended or renewed after the  
44 effective date of the suspension qualifies for credit, except to the  
45 extent that the obligation of an assuming insurer under the contract  
46 are secured in accordance with section 3 of P.L.1993, c.243  
47 (C.17:51B-3).

1 (b) If the eligibility of an assuming insurer is revoked, no credit  
2 for reinsurance may be granted after the effective date of the  
3 revocation with respect to any reinsurance agreements entered into  
4 by the assuming insurer, including reinsurance agreements entered  
5 into prior to the date of revocation, except to the extent that the  
6 obligations of the assuming insurer under the contract are secured in  
7 a form acceptable to the commissioner and consistent with the  
8 provisions of section 3 of P.L.1993, c.243 (C.17:51B-3).

9 (5) If subject to a legal process of rehabilitation, liquidation or  
10 conservation, as applicable, the ceding insurer, or its representative,  
11 may seek and, if determined appropriate by the court in which the  
12 proceedings are pending, may obtain an order requiring that the  
13 assuming insurer post security for all outstanding ceded liabilities.

14 (6) Nothing in this subsection shall limit or in any way alter the  
15 capacity of parties to a reinsurance agreement to agree on  
16 requirements for security or other terms in the reinsurance agreement,  
17 except as expressly prohibited by this P.L.1993, c.243 (C.17:51B-1  
18 et al.) or other applicable law or regulation.

19 (7) Credit may be taken under this subsection only for  
20 reinsurance agreements entered into, amended, or renewed on or after  
21 the effective date of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill), and only with respect to losses incurred and  
23 reserves reported on or after the later of the date on which the  
24 assuming insurer has met all eligibility requirements pursuant to  
25 paragraph (1) of this subsection, or the effective date of the new  
26 reinsurance agreement, amendment, or renewal.

27 (a) This paragraph shall not alter or impair a ceding insurer's  
28 right to take credit for reinsurance, to the extent that credit is not  
29 available under this subsection, as long as the reinsurance qualifies  
30 for credit under any other applicable provision of P.L.1993, c.243  
31 (C.17:51B-1 et al.)

32 (b) Nothing in this subsection shall authorize an assuming insurer  
33 to withdraw or reduce the security provided under any reinsurance  
34 agreement except as permitted by the terms of the agreement.

35 (c) Nothing in this subsection shall limit, or in any way alter, the  
36 capacity of parties to any reinsurance agreement to renegotiate the  
37 agreement.

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

45 **[f] g.** The commissioner [may, in his discretion,] has the  
46 discretion to allow credit for reinsurance if the reinsurance is ceded  
47 to an assuming insurer not meeting the requirements of subsection a.,  
48 b., c. or d. of this section but only if the assuming insurer holds

1 surplus or equivalent in excess of \$250 million. In determining  
2 whether credit should be allowed, the commissioner shall consider  
3 the following: (1) that the reinsurer has a secure financial strength  
4 rating from at least two nationally recognized statistical rating  
5 organizations deemed acceptable by the commissioner; (2) the  
6 domiciliary regulatory jurisdiction of the assuming insurer; (3) the  
7 structure and authority of the domiciliary regulator with regard to  
8 solvency regulation requirements and the financial surveillance of  
9 the reinsurer; (4) the substance of financial and operating standards  
10 for reinsurers in the domiciliary jurisdiction; (5) the form and  
11 substance of financial reports required to be filed by the reinsurer in  
12 the domiciliary jurisdiction or other public financial statements filed  
13 in accordance with generally accepted accounting principles; (6) the  
14 domiciliary regulator's willingness to cooperate with United States  
15 regulators in general and the commissioner, in particular; (7) the  
16 history of performance by reinsurers in the domiciliary jurisdiction;  
17 (8) the reinsurer's or an affiliate's use of in-State professional service  
18 providers related or unrelated to the reinsurance, including, but not  
19 limited to, attorneys, accountants, managers, actuaries, brokers or  
20 intermediaries; (9) any documented evidence of substantial problems  
21 with the enforcement of valid United States judgments in the  
22 domiciliary jurisdiction; and (10) any other matters deemed relevant  
23 by the commissioner. The commissioner shall give appropriate  
24 consideration to insurer group ratings that may have been issued. The  
25 commissioner may, in lieu of granting full credit under this  
26 subsection, reduce the amount required to be held in trust under  
27 subsection d. of this section.

28 The provisions of this subsection shall apply only to reinsurance  
29 contracts entered into or renewed on or after the effective date of  
30 P.L.2011, c.39, except that the provisions applicable to life  
31 reinsurance contracts shall not become effective until the earlier of  
32 24 months from the effective date of P.L.2011, c.39, or the  
33 implementation of principles-based standards of life insurance  
34 reserving by the National Association of Insurance Commissioners.

35 **[g]** h. If the assuming insurer is not licensed or accredited to  
36 transact insurance or reinsurance in this State, the credit permitted by  
37 subsections c. and d. of this section shall not be allowed unless the  
38 assuming insurer agrees in the reinsurance agreements: (1) that in  
39 the event of the failure of the assuming insurer to perform its  
40 obligations under the terms of the reinsurance agreement, the  
41 assuming insurer, at the request of the ceding insurer, shall submit to  
42 the jurisdiction of any court of competent jurisdiction in any state of  
43 the United States, shall comply with all requirements necessary to  
44 give such court jurisdiction, and shall abide by the final decision of  
45 such court or any appellate court in the event of an appeal; and (2) to  
46 designate the commissioner or a designated attorney as its true and  
47 lawful attorney upon whom may be served any lawful process in any  
48 action, suit or proceeding instituted by or on behalf of the ceding

1 company. This provision is not intended to conflict with or override  
2 the obligation of the parties to a reinsurance agreement to arbitrate  
3 their disputes, if such an obligation is created in the agreement.

4 (cf: P.L.2011, c.39, s.4)

5  
6 3. Section 5 of P.L.1993, c.243 (C.17:51B-4) is amended to read  
7 as follows:

8 5. a. The commissioner may promulgate rules and regulations  
9 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
10 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes  
11 of this act.

12 b. The commissioner is further authorized to adopt rules and  
13 regulations applicable to reinsurance arrangements described in this  
14 subsection.

15 (1) A regulation adopted pursuant to this subsection, shall apply  
16 only to reinsurance relating to:

17 (a) life insurance policies with guaranteed nonlevel gross  
18 premiums or guaranteed nonlevel benefits;

19 (b) universal life insurance policies with provisions resulting in  
20 the ability of a policyholder to keep a policy in force over a secondary  
21 guarantee period;

22 (c) variable annuities with guaranteed death or living benefits;

23 (d) long-term care insurance policies; or

24 (e) other life and health insurance and annuity products as to  
25 which the NAIC adopts model regulatory requirements with respect  
26 to credit for reinsurance.

27 (2) A regulation adopted pursuant to subparagraphs (a) or (b) of  
28 paragraph (1) of this subsection, may apply to any treaty containing:

29 (a) policies issued on or after January 1, 2022;

30 (b) policies issued prior to January 1, 2022, if risk pertaining to  
31 those policies is ceded in connection with the treaty, in whole or in  
32 part, on or after January 1, 2022; or

33 (c) a treaty containing policies as described in both (a) and (b)  
34 above.

35 (3) A regulation adopted pursuant to this subsection may require  
36 the ceding insurer, in calculating the amounts or forms of security  
37 required to be held under regulations promulgated under this  
38 authority, to use the Valuation Manual adopted by the NAIC under  
39 section 11B(1) of the NAIC Standard Valuation Law, including all  
40 amendments adopted by the NAIC and in effect on the date as of  
41 which the calculation is made, to the extent applicable.

42 (4) A regulation adopted pursuant to this subsection shall not  
43 apply to cessions to an assuming insurer that:

44 (a) meets the conditions set forth in section 2F of the Credit for  
45 Reinsurance Model Law in this State or, if this State has not adopted  
46 provisions substantially equivalent to section 2F of the Credit for  
47 Reinsurance Model Law, the assuming insurer is operating in  
48 accordance with provisions substantially equivalent to section 2F of

1 the Credit for Reinsurance Model Law in a minimum of five other  
2 states; or  
3 (b) is certified in this State or, if this State has not adopted  
4 provisions substantially equivalent to section 2E of the Credit for  
5 Reinsurance Model Law, certified in a minimum of five other states;  
6 or  
7 (c) maintains at least \$250 million in capital and surplus when  
8 determined in accordance with the NAIC Accounting Practices and  
9 Procedures Manual, including all amendments thereto adopted by the  
10 NAIC, excluding the impact of any permitted or prescribed practices;  
11 and is  
12 (i) licensed in at least 26 states; or  
13 (ii) licensed in at least 10 states, and licensed or accredited in a  
14 total of at least 35 states.  
15 (5) The authority to adopt regulations pursuant to this subsection  
16 b. of this section shall not prohibit the authority of the commissioner  
17 to adopt regulations pursuant to subsection a. of this section.  
18 (cf: P.L.1993, c.243)

19  
20 4. This act shall take effect immediately.

21  
22  
23 STATEMENT

24  
25 This bill updates current law on credit for reinsurance by  
26 providing credit for reinsurance ceded by a domestic insurer to an  
27 assuming insurer that has its head office domiciled and licensed in a  
28 reciprocal jurisdiction. The bill eliminates reinsurance collateral  
29 requirements and local presence requirements for reinsurers in the  
30 European Union and United Kingdom that maintain minimum capital  
31 and surplus requirements. Under the bill, the supervisory authority of  
32 the assuming insurer is to confirm to the commissioner on an annual  
33 basis that the assuming insurer complies with certain requirements.  
34 The commissioner may revoke or suspend the eligibility of an  
35 assuming insurer if it no longer meets one or more of the  
36 requirements.

37  
38  
39  
40  
41 \_\_\_\_\_  
42 Revises current law to incorporate provisions of bilateral  
43 agreement between United States and European Union on prudential  
measures regarding insurance and reinsurance.

**CHAPTER 354**  
**(CORRECTED COPY)**

AN ACT concerning credit for reinsurance and amending P.L.1993, c.243.

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

1. Section 1 of P.L.1993, c.243 (C.17:51B-1) is amended to read as follows:

C.17:51B-1 Definitions.

1. For purposes of this act:

"Commissioner" means the Commissioner of Banking and Insurance.

"Insurer" means:

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

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

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

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

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

"NAIC" means the National Association of Insurance Commissioners.

"Qualified United States financial institution," (1) as used in subsection c. of section 3 of this act, means an institution that: (a) is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof; (b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and (c) has been determined by either the commissioner, or the Securities Valuation Office of the NAIC, 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; or (2) as used elsewhere in this act, means an institution that: (a) is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and (b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

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

C.17:51B-2 Credit for reinsurance ceded by certain insurers.

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

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

b. 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 United States branch of an assuming alien 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 or other regulatory authority of its state of domicile and a copy of its most recent audited financial statement; and either:

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

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

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

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

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

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

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

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

(3) Provides any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfies such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State; except that the requirement of paragraph (1) of this subsection shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; or

d. The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution 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 addition to the requirements of this subsection, the assuming insurer shall provide any additional information,



which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfy such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State.

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

(2) In the case of a group of insurers, which group includes individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which not less than \$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 for the fiscal period immediately preceding, which shall not be less than one year, by the group's domiciliary regulator and its independent certified public accountant.

(3) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in this section, has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, 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 not less than \$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 a joint trusteed surplus of which not less than \$100,000,000 shall be held jointly and exclusively 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 for the fiscal period immediately preceding, which shall not be less than one year, by the member's domiciliary regulator and its independent certified public accountant.

Any trust established pursuant to this subsection shall be in a form approved by the commissioner, and the content, location, legal currency and financial institutions shall be acceptable to the commissioner. 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 shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. 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's 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; or

e. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below:

(a) The assuming insurer shall have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. “Reciprocal jurisdiction” shall mean a jurisdiction that meets one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to sections 313 and 314 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (31 U.S.C. ss. 313-314) that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(iii) A qualified jurisdiction, as determined by the commissioner pursuant to paragraph g. of this section, which is not otherwise described in subparagraphs (i) or (ii) of this subparagraph and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in regulation.

(b) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in regulation.

(c) The assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, which will be set forth in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(d) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, as follows:

(i) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subparagraphs (b) or (c) of this paragraph, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) The assuming insurer shall consent in writing to the jurisdiction of the courts of this State and to the appointment of the commissioner as agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this provision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent those agreements are unenforceable under applicable insolvency or delinquency laws;

(iii) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(iv) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(v) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement which involves this State's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into a solvent scheme of arrangement. The security shall be in a form consistent with the provisions of subsection g. of section 2 of P.L.2021, c.354 (C.17:51B-2) and section 3 of P.L.1993, c.243 (C.17:51B-3) and as specified by the commissioner in regulation.

(e) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner in regulation.

(f) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.

(g) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in subparagraphs (b) and (c) of this paragraph.

(h) Nothing in this section precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(2) The commissioner shall create and publish, in a timely manner, a list of reciprocal jurisdictions.

(a) A list of reciprocal jurisdictions is published through the NAIC committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subparagraph (a) of paragraph (1) of this subsection, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed through regulations issued by the commissioner.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in regulations issued by the commissioner, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subparagraphs (i) and (ii) of subparagraph (a) of paragraph (1) of this subsection. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to P.L.1993, c.243 (C.17:51B-1 et al.).

(3) The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to the list if an NAIC accredited jurisdiction has added an assuming insurer to a list of assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under subparagraph (d) of paragraph (1) of this subsection and complies with any additional requirements that the commissioner may impose by regulation, except to the extent that the requirements conflict with an applicable covered agreement.

(4) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation.

(a) While the eligibility of an assuming insurer is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit, except to the extent that the obligation of an assuming insurer under the contract are secured in accordance with section 3 of P.L.1993, c.243 (C.17:51B-3).

(b) If the eligibility of an assuming insurer is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the obligations of the assuming insurer under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of section 3 of P.L.1993, c.243 (C.17:51B-3).

(5) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(6) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this P.L.1993, c.243 (C.17:51B-1 et al.) or other applicable law or regulation.

(7) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the effective date of P.L.2021, c.354 (C.17:51B-1 et al.), and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to paragraph (1) of this subsection, or the effective date of the new reinsurance agreement, amendment, or renewal.

(a) This paragraph shall not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of P.L.1993, c.243 (C.17:51B-1 et al.)

(b) Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(c) Nothing in this subsection shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

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

g. The commissioner has the discretion to allow credit for reinsurance if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection a., b., c. or d. of this section but only if the assuming insurer holds surplus or equivalent in excess of \$250 million. In determining whether credit should be allowed, the commissioner shall consider the following: (1) that the reinsurer has a secure financial strength rating from at least two nationally recognized statistical rating organizations deemed acceptable by the commissioner; (2) the domiciliary regulatory jurisdiction of the assuming insurer; (3) the structure and

authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer; (4) the substance of financial and operating standards for reinsurers in the domiciliary jurisdiction; (5) the form and substance of financial reports required to be filed by the reinsurer in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles; (6) the domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner, in particular; (7) the history of performance by reinsurers in the domiciliary jurisdiction; (8) the reinsurer's or an affiliate's use of in-State professional service providers related or unrelated to the reinsurance, including, but not limited to, attorneys, accountants, managers, actuaries, brokers or intermediaries; (9) any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction; and (10) any other matters deemed relevant by the commissioner. The commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The commissioner may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under subsection d. of this section.

The provisions of this subsection shall apply only to reinsurance contracts entered into or renewed on or after the effective date of P.L.2011, c.39, except that the provisions applicable to life reinsurance contracts shall not become effective until the earlier of 24 months from the effective date of P.L.2011, c.39, or the implementation of principles-based standards of life insurance reserving by the National Association of Insurance Commissioners.

h. 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 this section 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, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or 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.

3. Section 5 of P.L.1993, c.243 (C.17:51B-4) is amended to read as follows:

C.17:51B-4 Rules, regulations.

5. a. The commissioner may promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes of this act.

b. The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in this subsection.

(1) A regulation adopted pursuant to this subsection, shall apply only to reinsurance relating to:

(a) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(b) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(c) variable annuities with guaranteed death or living benefits;  
(d) long-term care insurance policies; or  
(e) other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(2) A regulation adopted pursuant to subparagraphs (a) or (b) of paragraph (1) of this subsection, may apply to any treaty containing:

(a) policies issued on or after January 1, 2022;  
(b) policies issued prior to January 1, 2022, if risk pertaining to those policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2022; or  
(c) a treaty containing policies as described in both (a) and (b) above.

(3) A regulation adopted pursuant to this subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.

(4) A regulation adopted pursuant to this subsection shall not apply to cessions to an assuming insurer that:

(a) meets the conditions set forth in section 2F of the Credit for Reinsurance Model Law in this State or, if this State has not adopted provisions substantially equivalent to section 2F of the Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to section 2F of the Credit for Reinsurance Model Law in a minimum of five other states; or

(b) is certified in this State or, if this State has not adopted provisions substantially equivalent to section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five other states; or

(c) maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

(i) licensed in at least 26 states; or  
(ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(5) The authority to adopt regulations pursuant to this subsection shall not prohibit the authority of the commissioner to adopt regulations pursuant to subsection a. of this section.

4. This act shall take effect immediately.

Approved January 10, 2022.

# SENATE, No. 4213

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

**Sponsored by:**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Revises current law to incorporate provisions of bilateral agreement between United States and European Union on prudential measures regarding insurance and reinsurance.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/20/2021)

S4213 POU

2

1 AN ACT concerning credit for reinsurance and amending P.L.1993,  
2 c.243.

3

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

6

7 1. Section 1 of P.L.1993, c.243 (C.17:51B-1) is amended to read  
8 as follows:

9 1. For purposes of this act:

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Insurer" means:

13 (1) Any corporation, association, partnership, reciprocal  
14 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or  
15 other person engaged in the business of insurance pursuant to Subtitle  
16 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the  
17 New Jersey Statutes;

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

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

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

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

26 "NAIC" means the National Association of Insurance  
27 Commissioners.

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

**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.



S4213 POU

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

3 (cf: P.L.1993, c.243, s.1)

4

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

7 2. Credit for reinsurance ceded by an insurer which is domiciled  
8 in New Jersey, or which is either licensed in New Jersey or eligible  
9 to write surplus lines insurance in New Jersey and which in either  
10 case is domiciled in a state or country which does not employ  
11 standards regarding credit for reinsurance substantially similar, as  
12 determined by the commissioner, to those applicable under this act,  
13 shall be allowed as either an asset or a deduction from liability only  
14 when:

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

17 b. The reinsurance is ceded to an assuming insurer which is  
18 accredited as a reinsurer in this State. An accredited reinsurer is one  
19 which:

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

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

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

28 (4) Files annually with the commissioner a copy of its annual  
29 statement filed with the insurance department or other regulatory  
30 authority of its state of domicile and a copy of its most recent audited  
31 financial statement; and either:

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

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

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

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

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1 No credit shall be allowed a ceding licensed insurer or  
2 unauthorized eligible surplus lines insurer if the assuming insurer's  
3 accreditation has been revoked by the commissioner after notice and  
4 hearing; or

5 c. The reinsurance is ceded to an assuming insurer which is  
6 domiciled and licensed in, or in the case of a United States branch of  
7 an assuming alien insurer, is entered through, a state which employs  
8 standards regarding credit for reinsurance substantially similar to  
9 those applicable under this act, as determined by the commissioner,  
10 and that assuming insurer or United States branch of an assuming  
11 alien insurer:

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

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

16 (3) Provides any additional information, which may include, but  
17 may not be limited to, information regarding the concentration of the  
18 insurer's exposures, geographic or otherwise, and satisfies such  
19 additional requirements as the commissioner deems necessary to  
20 ensure that the particular insurer's condition and methods of  
21 operation are not such as would render its operations hazardous to  
22 the public or policyholders in this State; except that the requirement  
23 of paragraph (1) of this subsection shall not apply to reinsurance  
24 ceded and assumed pursuant to pooling arrangements among insurers  
25 in the same holding company system; or

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

42 (1) In the case of a single assuming insurer, the trust shall consist  
43 of a trusteed account representing the assuming insurer's liabilities  
44 attributable to business written in the United States and in addition,  
45 the assuming insurer shall maintain a trusteed surplus of not less than  
46 \$20,000,000.

47 (2) In the case of a group of insurers, which group includes  
48 individual unincorporated underwriters, the trust shall consist of a

1    trusted account representing the group's liabilities attributable to  
2    business written in the United States and, in addition, the group shall  
3    maintain a trusted surplus of which not less than \$100,000,000 shall  
4    be held jointly for the benefit of United States ceding insurers of any  
5    member of the group; and the group shall make available to the  
6    commissioner an annual certification of the solvency of each  
7    underwriter for the fiscal period immediately preceding, which shall  
8    not be less than one year, by the group's domiciliary regulator and its  
9    independent certified public accountant.

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

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

47    e. (1) Credit shall be allowed when the reinsurance is ceded to an  
48    assuming insurer meeting each of the conditions set forth below:

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1     (a) The assuming insurer shall have its head office or be  
2 domiciled in, as applicable, and be licensed in a reciprocal  
3 jurisdiction. “Reciprocal jurisdiction” shall mean a jurisdiction that  
4 meets one of the following:

5         (i) A non-U.S. jurisdiction that is subject to an in-force covered  
6 agreement with the United States, each within its legal authority, or,  
7 in the case of a covered agreement between the United States and  
8 European Union, is a member state of the European Union. For  
9 purposes of this subsection, a “covered agreement” is an agreement  
10 entered into pursuant to sections 313 and 314 of the Dodd-Frank Wall  
11 Street Reform and Consumer Protection Act (31 U.S.C. ss. 313-314)  
12 that is currently in effect or in a period of provisional application and  
13 addresses the elimination, under specified conditions, of collateral  
14 requirements as a condition for entering into any reinsurance  
15 agreement with a ceding insurer domiciled in this State or for  
16 allowing the ceding insurer to recognize credit for reinsurance;

17         (ii) A U.S. jurisdiction that meets the requirements for  
18 accreditation under the NAIC financial standards and accreditation  
19 program; or

20         (iii) A qualified jurisdiction, as determined by the commissioner  
21 pursuant to paragraph g. of this section, which is not otherwise  
22 described in subparagraphs (i) or (ii) of this subparagraph and  
23 which meets certain additional requirements, consistent with the  
24 terms and conditions of in-force covered agreements, as specified by  
25 the commissioner in regulation.

26     (b) The assuming insurer shall have and maintain, on an ongoing  
27 basis, minimum capital and surplus, or its equivalent, calculated  
28 according to the methodology of its domiciliary jurisdiction, in an  
29 amount to be set forth in regulation. If the assuming insurer is an  
30 association, including incorporated and individual unincorporated  
31 underwriters, it shall have and maintain, on an ongoing basis,  
32 minimum capital and surplus equivalents (net of liabilities),  
33 calculated according to the methodology applicable in its domiciliary  
34 jurisdiction, and a central fund containing a balance in amounts to be  
35 set forth in regulation.

36     (c) The assuming insurer shall have and maintain, on an ongoing  
37 basis, a minimum solvency or capital ratio, as applicable, which will  
38 be set forth in regulation. If the assuming insurer is an association,  
39 including incorporated and individual unincorporated underwriters,  
40 it shall have and maintain, on an ongoing basis, a minimum solvency  
41 or capital ratio in the reciprocal jurisdiction where the assuming  
42 insurer has its head office or is domiciled, as applicable, and is also  
43 licensed.

44     (d) The assuming insurer shall agree and provide adequate  
45 assurance to the commissioner, in a form specified by the  
46 commissioner pursuant to regulation, as follows:

47         (i) The assuming insurer shall provide prompt written notice and  
48 explanation to the commissioner if it falls below the minimum

- 1 requirements set forth in subparagraphs (b) or (c) of this paragraph,  
2 or if any regulatory action is taken against it for serious  
3 noncompliance with applicable law;
- 4 (ii) The assuming insurer shall consent in writing to the  
5 jurisdiction of the courts of this State and to the appointment of the  
6 commissioner as agent for service of process. The commissioner may  
7 require that consent for service of process be provided to the  
8 commissioner and included in each reinsurance agreement. Nothing  
9 in this provision shall limit, or in any way alter, the capacity of parties  
10 to a reinsurance agreement to agree to alternative dispute resolution  
11 mechanisms, except to the extent those agreements are unenforceable  
12 under applicable insolvency or delinquency laws;
- 13 (iii) The assuming insurer shall consent in writing to pay all final  
14 judgments, wherever enforcement is sought, obtained by a ceding  
15 insurer or its legal successor, that have been declared enforceable in  
16 the jurisdiction where the judgment was obtained;
- 17 (iv) Each reinsurance agreement shall include a provision requiring  
18 the assuming insurer to provide security in an amount equal to 100  
19 percent of the assuming insurer's liabilities attributable to  
20 reinsurance ceded pursuant to that agreement if the assuming insurer  
21 resists enforcement of a final judgment that is enforceable under the  
22 law of the jurisdiction in which it was obtained or a properly  
23 enforceable arbitration award, whether obtained by the ceding insurer  
24 or by its legal successor on behalf of its resolution estate; and
- 25 (v) The assuming insurer shall confirm that it is not presently  
26 participating in any solvent scheme of arrangement which involves  
27 this State's ceding insurers, and agree to notify the ceding insurer and  
28 the commissioner and to provide security in an amount equal to 100  
29 percent of the assuming insurer's liabilities to the ceding insurer,  
30 should the assuming insurer enter into a solvent scheme of  
31 arrangement. The security shall be in a form consistent with the  
32 provisions of subsection g. of section 2 of P.L. , c. (C. )  
33 (pending before the Legislature as this bill) and section 3 of  
34 P.L.1993, c.243 (C.17:51B-3) and as specified by the commissioner  
35 in regulation.
- 36 (e) The assuming insurer or its legal successor shall provide, if  
37 requested by the commissioner, on behalf of itself and any legal  
38 predecessors, certain documentation to the commissioner, as  
39 specified by the commissioner in regulation.
- 40 (f) The assuming insurer shall maintain a practice of prompt  
41 payment of claims under reinsurance agreements, pursuant to criteria  
42 set forth in regulation.
- 43 (g) The assuming insurer's supervisory authority shall confirm to  
44 the commissioner on an annual basis, as of the preceding December  
45 31 or at the annual date otherwise statutorily reported to the  
46 reciprocal jurisdiction, that the assuming insurer complies with the  
47 requirements set forth in subparagraphs (b) and (c) of this paragraph.

- 1     (h) Nothing in this section precludes an assuming insurer from  
2 providing the commissioner with information on a voluntary basis.
- 3     (2) The commissioner shall create and publish, in a timely  
4 manner, a list of reciprocal jurisdictions.
- 5     (a) A list of reciprocal jurisdictions is published through the  
6 NAIC committee process. The commissioner's list shall include any  
7 reciprocal jurisdiction as defined under subparagraph (a) of  
8 paragraph (1) of this subsection, and shall consider any other  
9 reciprocal jurisdiction included on the NAIC list. The commissioner  
10 may approve a jurisdiction that does not appear on the NAIC list of  
11 reciprocal jurisdictions in accordance with criteria to be developed  
12 through regulations issued by the commissioner.
- 13     (b) The commissioner may remove a jurisdiction from the list of  
14 reciprocal jurisdictions upon a determination that the jurisdiction no  
15 longer meets the requirements of a reciprocal jurisdiction, in  
16 accordance with a process set forth in regulations issued by the  
17 commissioner, except that the commissioner shall not remove from  
18 the list a reciprocal jurisdiction as defined under subparagraphs  
19 (i) and (ii) of subparagraph (a) of paragraph (1) of this subsection.  
20 Upon removal of a reciprocal jurisdiction from this list, credit for  
21 reinsurance ceded to an assuming insurer which has its home office  
22 or is domiciled in that jurisdiction shall be allowed, if otherwise  
23 allowed pursuant to P.L.1993, c.243 (C.17:51B-1 et al.).
- 24     (3) The commissioner shall create and publish a list of assuming  
25 insurers that have satisfied the conditions set forth in this subsection  
26 and to which cessions shall be granted credit in accordance with this  
27 subsection. The commissioner may add an assuming insurer to the  
28 list if an NAIC accredited jurisdiction has added an assuming insurer  
29 to a list of assuming insurers or if, upon initial eligibility, the  
30 assuming insurer submits the information to the commissioner as  
31 required under subparagraph (d) of paragraph (1) of this subsection  
32 and complies with any additional requirements that the commissioner  
33 may impose by regulation, except to the extent that the requirements  
34 conflict with an applicable covered agreement.
- 35     (4) If the commissioner determines that an assuming insurer no  
36 longer meets one or more of the requirements under this subsection,  
37 the commissioner may revoke or suspend the eligibility of the  
38 assuming insurer for recognition under this subsection in accordance  
39 with procedures set forth in regulation.
- 40     (a) While the eligibility of an assuming insurer is suspended, no  
41 reinsurance agreement issued, amended or renewed after the  
42 effective date of the suspension qualifies for credit, except to the  
43 extent that the obligation of an assuming insurer under the contract  
44 are secured in accordance with section 3 of P.L.1993, c.243  
45 (C.17:51B-3).
- 46     (b) If the eligibility of an assuming insurer is revoked, no credit  
47 for reinsurance may be granted after the effective date of the  
48 revocation with respect to any reinsurance agreements entered into

1 by the assuming insurer, including reinsurance agreements entered  
2 into prior to the date of revocation, except to the extent that the  
3 obligations of the assuming insurer under the contract are secured in  
4 a form acceptable to the commissioner and consistent with the  
5 provisions of section 3 of P.L.1993, c.243 (C.17:51B-3).

6 (5) If subject to a legal process of rehabilitation, liquidation or  
7 conservation, as applicable, the ceding insurer, or its representative,  
8 may seek and, if determined appropriate by the court in which the  
9 proceedings are pending, may obtain an order requiring that the  
10 assuming insurer post security for all outstanding ceded liabilities.

11 (6) Nothing in this subsection shall limit or in any way alter the  
12 capacity of parties to a reinsurance agreement to agree on  
13 requirements for security or other terms in the reinsurance agreement,  
14 except as expressly prohibited by this P.L.1993, c.243 (C.17:51B-1  
15 et al.) or other applicable law or regulation.

16 (7) Credit may be taken under this subsection only for  
17 reinsurance agreements entered into, amended, or renewed on or after  
18 the effective date of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill), and only with respect to losses incurred and  
20 reserves reported on or after the later of the date on which the  
21 assuming insurer has met all eligibility requirements pursuant to  
22 paragraph (1) of this subsection, or the effective date of the new  
23 reinsurance agreement, amendment, or renewal.

24 (a) This paragraph shall not alter or impair a ceding insurer's  
25 right to take credit for reinsurance, to the extent that credit is not  
26 available under this subsection, as long as the reinsurance qualifies  
27 for credit under any other applicable provision of P.L.1993, c.243  
28 (C.17:51B-1 et al.)

29 (b) Nothing in this subsection shall authorize an assuming insurer  
30 to withdraw or reduce the security provided under any reinsurance  
31 agreement except as permitted by the terms of the agreement.

32 (c) Nothing in this subsection shall limit, or in any way alter, the  
33 capacity of parties to any reinsurance agreement to renegotiate the  
34 agreement.

35 **[e]** f. The commissioner [may, in his discretion,] has the  
36 discretion to allow credit for reinsurance if the reinsurance is ceded  
37 to an assuming insurer not meeting the requirements of subsection a.,  
38 b., c. [or], d., or e. of this section but only with respect to the  
39 insurance of risks located in jurisdictions where such reinsurance is  
40 required or provided by applicable law or regulation of that  
41 jurisdiction; or

42 **[f]** g. The commissioner [may, in his discretion,] has the  
43 discretion to allow credit for reinsurance if the reinsurance is ceded  
44 to an assuming insurer not meeting the requirements of subsection a.,  
45 b., c. or d. of this section but only if the assuming insurer holds  
46 surplus or equivalent in excess of \$250 million. In determining  
47 whether credit should be allowed, the commissioner shall consider  
48 the following: (1) that the reinsurer has a secure financial strength

1 rating from at least two nationally recognized statistical rating  
2 organizations deemed acceptable by the commissioner; (2) the  
3 domiciliary regulatory jurisdiction of the assuming insurer; (3) the  
4 structure and authority of the domiciliary regulator with regard to  
5 solvency regulation requirements and the financial surveillance of  
6 the reinsurer; (4) the substance of financial and operating standards  
7 for reinsurers in the domiciliary jurisdiction; (5) the form and  
8 substance of financial reports required to be filed by the reinsurer in  
9 the domiciliary jurisdiction or other public financial statements filed  
10 in accordance with generally accepted accounting principles; (6) the  
11 domiciliary regulator's willingness to cooperate with United States  
12 regulators in general and the commissioner, in particular; (7) the  
13 history of performance by reinsurers in the domiciliary jurisdiction;  
14 (8) the reinsurer's or an affiliate's use of in-State professional service  
15 providers related or unrelated to the reinsurance, including, but not  
16 limited to, attorneys, accountants, managers, actuaries, brokers or  
17 intermediaries; (9) any documented evidence of substantial problems  
18 with the enforcement of valid United States judgments in the  
19 domiciliary jurisdiction; and (10) any other matters deemed relevant  
20 by the commissioner. The commissioner shall give appropriate  
21 consideration to insurer group ratings that may have been issued. The  
22 commissioner may, in lieu of granting full credit under this  
23 subsection, reduce the amount required to be held in trust under  
24 subsection d. of this section.

25 The provisions of this subsection shall apply only to reinsurance  
26 contracts entered into or renewed on or after the effective date of  
27 P.L.2011, c.39, except that the provisions applicable to life  
28 reinsurance contracts shall not become effective until the earlier of  
29 24 months from the effective date of P.L.2011, c.39, or the  
30 implementation of principles-based standards of life insurance  
31 reserving by the National Association of Insurance Commissioners.

32 **[g]** h. If the assuming insurer is not licensed or accredited to  
33 transact insurance or reinsurance in this State, the credit permitted by  
34 subsections c. and d. of this section shall not be allowed unless the  
35 assuming insurer agrees in the reinsurance agreements: (1) that in  
36 the event of the failure of the assuming insurer to perform its  
37 obligations under the terms of the reinsurance agreement, the  
38 assuming insurer, at the request of the ceding insurer, shall submit to  
39 the jurisdiction of any court of competent jurisdiction in any state of  
40 the United States, shall comply with all requirements necessary to  
41 give such court jurisdiction, and shall abide by the final decision of  
42 such court or any appellate court in the event of an appeal; and (2) to  
43 designate the commissioner or a designated attorney as its true and  
44 lawful attorney upon whom may be served any lawful process in any  
45 action, suit or proceeding instituted by or on behalf of the ceding  
46 company. This provision is not intended to conflict with or override  
47 the obligation of the parties to a reinsurance agreement to arbitrate



1 their disputes, if such an obligation is created in the agreement.  
2 (cf: P.L.2011, c.39, s.4)

3

4 3. Section 5 of P.L.1993, c.243 (C.17:51B-4) is amended to read  
5 as follows:

6 5. a. The commissioner may promulgate rules and regulations  
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
8 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes  
9 of this act.

10 b. The commissioner is further authorized to adopt rules and  
11 regulations applicable to reinsurance arrangements described in this  
12 subsection.

13 (1) A regulation adopted pursuant to this subsection, shall apply  
14 only to reinsurance relating to:

15 (a) life insurance policies with guaranteed nonlevel gross  
16 premiums or guaranteed nonlevel benefits;

17 (b) universal life insurance policies with provisions resulting in  
18 the ability of a policyholder to keep a policy in force over a secondary  
19 guarantee period;

20 (c) variable annuities with guaranteed death or living benefits;

21 (d) long-term care insurance policies; or

22 (e) other life and health insurance and annuity products as to  
23 which the NAIC adopts model regulatory requirements with respect  
24 to credit for reinsurance.

25 (2) A regulation adopted pursuant to subparagraphs (a) or (b) of  
26 paragraph (1) of this subsection, may apply to any treaty containing:

27 (a) policies issued on or after January 1, 2022;

28 (b) policies issued prior to January 1, 2022, if risk pertaining to  
29 those policies is ceded in connection with the treaty, in whole or in  
30 part, on or after January 1, 2022; or

31 (c) a treaty containing policies as described in both (a) and (b)  
32 above.

33 (3) A regulation adopted pursuant to this subsection may require  
34 the ceding insurer, in calculating the amounts or forms of security  
35 required to be held under regulations promulgated under this  
36 authority, to use the Valuation Manual adopted by the NAIC under  
37 section 11B(1) of the NAIC Standard Valuation Law, including all  
38 amendments adopted by the NAIC and in effect on the date as of  
39 which the calculation is made, to the extent applicable.

40 (4) A regulation adopted pursuant to this subsection shall not  
41 apply to cessions to an assuming insurer that:

42 (a) meets the conditions set forth in section 2F of the Credit for  
43 Reinsurance Model Law in this State or, if this State has not adopted  
44 provisions substantially equivalent to section 2F of the Credit for  
45 Reinsurance Model Law, the assuming insurer is operating in  
46 accordance with provisions substantially equivalent to section 2F of  
47 the Credit for Reinsurance Model Law in a minimum of five other  
48 states; or

- 1       (b) is certified in this State or, if this State has not adopted  
2 provisions substantially equivalent to section 2E of the Credit for  
3 Reinsurance Model Law, certified in a minimum of five other states;  
4 or  
5       (c) maintains at least \$250 million in capital and surplus when  
6 determined in accordance with the NAIC Accounting Practices and  
7 Procedures Manual, including all amendments thereto adopted by the  
8 NAIC, excluding the impact of any permitted or prescribed practices;  
9 and is  
10       (i) licensed in at least 26 states; or  
11       (ii) licensed in at least 10 states, and licensed or accredited in a  
12 total of at least 35 states.  
13       (5) The authority to adopt regulations pursuant to this subsection  
14 b. of this section shall not prohibit the authority of the commissioner  
15 to adopt regulations pursuant to subsection a. of this section.  
16 (cf: P.L.1993, c.243)

17

18       4. This act shall take effect immediately.

19

20

21

#### STATEMENT

22

23       This bill updates current law on credit for reinsurance by  
24 providing credit for reinsurance ceded by a domestic insurer to an  
25 assuming insurer that has its head office domiciled and licensed in a  
26 reciprocal jurisdiction. The bill eliminates reinsurance collateral  
27 requirements and local presence requirements for reinsurers in the  
28 European Union and United Kingdom that maintain minimum capital  
29 and surplus requirements. Under the bill, the supervisory authority of  
30 the assuming insurer is to confirm to the commissioner on an annual  
31 basis that the assuming insurer complies with certain requirements.  
32 The commissioner may revoke or suspend the eligibility of an  
33 assuming insurer if it no longer meets one or more of the  
34 requirements.

SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 4213**

**STATE OF NEW JERSEY**

DATED: DECEMBER 6, 2021

The Senate Commerce Committee reports favorably Senate Bill No. 4213.

This bill updates current law on credit for reinsurance by providing credit for reinsurance ceded by a domestic insurer to an assuming insurer that has its head office domiciled and licensed in a reciprocal jurisdiction. The bill eliminates reinsurance collateral requirements and local presence requirements for reinsurers in the European Union and United Kingdom that maintain minimum capital and surplus requirements. Under the bill, the supervisory authority of the assuming insurer is to confirm to the commissioner on an annual basis that the assuming insurer complies with certain requirements. The commissioner may revoke or suspend the eligibility of an assuming insurer if it no longer meets one or more of the requirements.

# ASSEMBLY, No. 6169

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

**Sponsored by:**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Revises current law to incorporate provisions of bilateral agreement between United States and European Union on prudential measures regarding insurance and reinsurance.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning credit for reinsurance and amending P.L.1993,  
2 c.243.

3

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

6

7 1. Section 1 of P.L.1993, c.243 (C.17:51B-1) is amended to read  
8 as follows:

9 1. For purposes of this act:

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Insurer" means:

13 (1) Any corporation, association, partnership, reciprocal  
14 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or  
15 other person engaged in the business of insurance pursuant to Subtitle  
16 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the  
17 New Jersey Statutes;

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

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

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

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

26 "NAIC" means the National Association of Insurance  
27 Commissioners.

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

47 (cf: P.L.1993, c.243, s.1)

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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

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

16       (1) Files with the commissioner evidence of its submission to this  
17 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 one  
21 state, or in the case of a United States branch of an assuming alien  
22 insurer, is entered through, and licensed to transact insurance or  
23 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 regulatory  
26 authority of its state of domicile and a copy of its most recent audited  
27 financial statement; and either:

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

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

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

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

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

1 c. The reinsurance is ceded to an assuming insurer which is  
2 domiciled and licensed in, or in the case of a United States branch of  
3 an assuming alien insurer, is entered through, a state which employs  
4 standards regarding credit for reinsurance substantially similar to  
5 those applicable under this act, as determined by the commissioner,  
6 and that assuming insurer or United States branch of an assuming  
7 alien insurer:

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

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

12 (3) Provides any additional information, which may include, but  
13 may not be limited to, information regarding the concentration of the  
14 insurer's exposures, geographic or otherwise, and satisfies such  
15 additional requirements as the commissioner deems necessary to  
16 ensure that the particular insurer's condition and methods of  
17 operation are not such as would render its operations hazardous to  
18 the public or policyholders in this State; except that the requirement  
19 of paragraph (1) of this subsection shall not apply to reinsurance  
20 ceded and assumed pursuant to pooling arrangements among insurers  
21 in the same holding company system; or

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

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

43 (2) In the case of a group of insurers, which group includes  
44 individual unincorporated underwriters, the trust shall consist of a  
45 trusteed account representing the group's liabilities attributable to  
46 business written in the United States and, in addition, the group shall  
47 maintain a trusteed surplus of which not less than \$100,000,000 shall  
48 be held jointly for the benefit of United States ceding insurers of any

1 member of the group; and the group shall make available to the  
2 commissioner an annual certification of the solvency of each  
3 underwriter for the fiscal period immediately preceding, which shall  
4 not be less than one year, by the group's domiciliary regulator and its  
5 independent certified public accountant.

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

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

43 e. (1) Credit shall be allowed when the reinsurance is ceded to  
44 an assuming insurer meeting each of the conditions set forth below:

45 (a) The assuming insurer shall have its head office or be  
46 domiciled in, as applicable, and be licensed in a reciprocal  
47 jurisdiction. "Reciprocal jurisdiction" shall mean a jurisdiction that  
48 meets one of the following:



1       (i) A non-U.S. jurisdiction that is subject to an in-force covered  
2 agreement with the United States, each within its legal authority, or,  
3 in the case of a covered agreement between the United States and  
4 European Union, is a member state of the European Union. For  
5 purposes of this subsection, a “covered agreement” is an agreement  
6 entered into pursuant to sections 313 and 314 of the Dodd-Frank Wall  
7 Street Reform and Consumer Protection Act (31 U.S.C. ss. 313-314)  
8 that is currently in effect or in a period of provisional application and  
9 addresses the elimination, under specified conditions, of collateral  
10 requirements as a condition for entering into any reinsurance  
11 agreement with a ceding insurer domiciled in this State or for  
12 allowing the ceding insurer to recognize credit for reinsurance;

13       (ii) A U.S. jurisdiction that meets the requirements for  
14 accreditation under the NAIC financial standards and accreditation  
15 program; or

16       (iii) A qualified jurisdiction, as determined by the commissioner  
17 pursuant to paragraph g. of this section, which is not otherwise  
18 described in subparagraphs (i) or (ii) of this subparagraph and  
19 which meets certain additional requirements, consistent with the  
20 terms and conditions of in-force covered agreements, as specified by  
21 the commissioner in regulation.

22       (b) The assuming insurer shall have and maintain, on an ongoing  
23 basis, minimum capital and surplus, or its equivalent, calculated  
24 according to the methodology of its domiciliary jurisdiction, in an  
25 amount to be set forth in regulation. If the assuming insurer is an  
26 association, including incorporated and individual unincorporated  
27 underwriters, it shall have and maintain, on an ongoing basis,  
28 minimum capital and surplus equivalents (net of liabilities),  
29 calculated according to the methodology applicable in its domiciliary  
30 jurisdiction, and a central fund containing a balance in amounts to be  
31 set forth in regulation.

32       (c) The assuming insurer shall have and maintain, on an ongoing  
33 basis, a minimum solvency or capital ratio, as applicable, which will  
34 be set forth in regulation. If the assuming insurer is an association,  
35 including incorporated and individual unincorporated underwriters,  
36 it shall have and maintain, on an ongoing basis, a minimum solvency  
37 or capital ratio in the reciprocal jurisdiction where the assuming  
38 insurer has its head office or is domiciled, as applicable, and is also  
39 licensed.

40       (d) The assuming insurer shall agree and provide adequate  
41 assurance to the commissioner, in a form specified by the  
42 commissioner pursuant to regulation, as follows:

43       (i) The assuming insurer shall provide prompt written notice and  
44 explanation to the commissioner if it falls below the minimum  
45 requirements set forth in subparagraphs (b) or (c) of this paragraph,  
46 or if any regulatory action is taken against it for serious  
47 noncompliance with applicable law;

1       (ii) The assuming insurer shall consent in writing to the  
2 jurisdiction of the courts of this State and to the appointment of the  
3 commissioner as agent for service of process. The commissioner may  
4 require that consent for service of process be provided to the  
5 commissioner and included in each reinsurance agreement. Nothing  
6 in this provision shall limit, or in any way alter, the capacity of parties  
7 to a reinsurance agreement to agree to alternative dispute resolution  
8 mechanisms, except to the extent those agreements are unenforceable  
9 under applicable insolvency or delinquency laws;

10       (iii) The assuming insurer shall consent in writing to pay all final  
11 judgments, wherever enforcement is sought, obtained by a ceding  
12 insurer or its legal successor, that have been declared enforceable in  
13 the jurisdiction where the judgment was obtained;

14       (iv) Each reinsurance agreement shall include a provision  
15 requiring the assuming insurer to provide security in an amount equal  
16 to 100 percent of the assuming insurer's liabilities attributable to  
17 reinsurance ceded pursuant to that agreement if the assuming insurer  
18 resists enforcement of a final judgment that is enforceable under the  
19 law of the jurisdiction in which it was obtained or a properly  
20 enforceable arbitration award, whether obtained by the ceding insurer  
21 or by its legal successor on behalf of its resolution estate; and

22       (v) The assuming insurer shall confirm that it is not presently  
23 participating in any solvent scheme of arrangement which involves  
24 this State's ceding insurers, and agree to notify the ceding insurer and  
25 the commissioner and to provide security in an amount equal to 100  
26 percent of the assuming insurer's liabilities to the ceding insurer,  
27 should the assuming insurer enter into a solvent scheme of  
28 arrangement. The security shall be in a form consistent with the  
29 provisions of subsection g. of section 2 of P.L. , c. (C. )  
30 (pending before the Legislature as this bill) and section 3 of  
31 P.L.1993, c.243 (C.17:51B-3) and as specified by the commissioner  
32 in regulation.

33       (e) The assuming insurer or its legal successor shall provide, if  
34 requested by the commissioner, on behalf of itself and any legal  
35 predecessors, certain documentation to the commissioner, as  
36 specified by the commissioner in regulation.

37       (f) The assuming insurer shall maintain a practice of prompt  
38 payment of claims under reinsurance agreements, pursuant to criteria  
39 set forth in regulation.

40       (g) The assuming insurer's supervisory authority shall confirm to  
41 the commissioner on an annual basis, as of the preceding December  
42 31 or at the annual date otherwise statutorily reported to the  
43 reciprocal jurisdiction, that the assuming insurer complies with the  
44 requirements set forth in subparagraphs (b) and (c) of this paragraph.

45       (h) Nothing in this section precludes an assuming insurer from  
46 providing the commissioner with information on a voluntary basis.

47       (2) The commissioner shall create and publish, in a timely  
48 manner, a list of reciprocal jurisdictions.

1       (a) A list of reciprocal jurisdictions is published through the  
2 NAIC committee process. The commissioner's list shall include any  
3 reciprocal jurisdiction as defined under subparagraph (a) of  
4 paragraph (1) of this subsection, and shall consider any other  
5 reciprocal jurisdiction included on the NAIC list. The commissioner  
6 may approve a jurisdiction that does not appear on the NAIC list of  
7 reciprocal jurisdictions in accordance with criteria to be developed  
8 through regulations issued by the commissioner.

9       (b) The commissioner may remove a jurisdiction from the list of  
10 reciprocal jurisdictions upon a determination that the jurisdiction no  
11 longer meets the requirements of a reciprocal jurisdiction, in  
12 accordance with a process set forth in regulations issued by the  
13 commissioner, except that the commissioner shall not remove from  
14 the list a reciprocal jurisdiction as defined under subparagraphs  
15 (i) and (ii) of subparagraph (a) of paragraph (1) of this subsection.  
16 Upon removal of a reciprocal jurisdiction from this list, credit for  
17 reinsurance ceded to an assuming insurer which has its home office  
18 or is domiciled in that jurisdiction shall be allowed, if otherwise  
19 allowed pursuant to P.L.1993, c.243 (C.17:51B-1 et al.).

20       (3) The commissioner shall create and publish a list of assuming  
21 insurers that have satisfied the conditions set forth in this subsection  
22 and to which cessions shall be granted credit in accordance with this  
23 subsection. The commissioner may add an assuming insurer to the  
24 list if an NAIC accredited jurisdiction has added an assuming insurer  
25 to a list of assuming insurers or if, upon initial eligibility, the  
26 assuming insurer submits the information to the commissioner as  
27 required under subparagraph (d) of paragraph (1) of this subsection  
28 and complies with any additional requirements that the commissioner  
29 may impose by regulation, except to the extent that the requirements  
30 conflict with an applicable covered agreement.

31       (4) If the commissioner determines that an assuming insurer no  
32 longer meets one or more of the requirements under this subsection,  
33 the commissioner may revoke or suspend the eligibility of the  
34 assuming insurer for recognition under this subsection in accordance  
35 with procedures set forth in regulation.

36       (a) While the eligibility of an assuming insurer is suspended, no  
37 reinsurance agreement issued, amended or renewed after the  
38 effective date of the suspension qualifies for credit, except to the  
39 extent that the obligation of an assuming insurer under the contract  
40 are secured in accordance with section 3 of P.L.1993, c.243  
41 (C.17:51B-3).

42       (b) If the eligibility of an assuming insurer is revoked, no credit  
43 for reinsurance may be granted after the effective date of the  
44 revocation with respect to any reinsurance agreements entered into  
45 by the assuming insurer, including reinsurance agreements entered  
46 into prior to the date of revocation, except to the extent that the  
47 obligations of the assuming insurer under the contract are secured in

1 a form acceptable to the commissioner and consistent with the  
2 provisions of section 3 of P.L.1993, c.243 (C.17:51B-3).

3 (5) If subject to a legal process of rehabilitation, liquidation or  
4 conservation, as applicable, the ceding insurer, or its representative,  
5 may seek and, if determined appropriate by the court in which the  
6 proceedings are pending, may obtain an order requiring that the  
7 assuming insurer post security for all outstanding ceded liabilities.

8 (6) Nothing in this subsection shall limit or in any way alter the  
9 capacity of parties to a reinsurance agreement to agree on  
10 requirements for security or other terms in the reinsurance agreement,  
11 except as expressly prohibited by this P.L.1993, c.243 (C.17:51B-1  
12 et al.) or other applicable law or regulation.

13 (7) Credit may be taken under this subsection only for  
14 reinsurance agreements entered into, amended, or renewed on or after  
15 the effective date of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill), and only with respect to losses incurred and  
17 reserves reported on or after the later of the date on which the  
18 assuming insurer has met all eligibility requirements pursuant to  
19 paragraph (1) of this subsection, or the effective date of the new  
20 reinsurance agreement, amendment, or renewal.

21 (a) This paragraph shall not alter or impair a ceding insurer's  
22 right to take credit for reinsurance, to the extent that credit is not  
23 available under this subsection, as long as the reinsurance qualifies  
24 for credit under any other applicable provision of P.L.1993, c.243  
25 (C.17:51B-1 et al.)

26 (b) Nothing in this subsection shall authorize an assuming insurer  
27 to withdraw or reduce the security provided under any reinsurance  
28 agreement except as permitted by the terms of the agreement.

29 (c) Nothing in this subsection shall limit, or in any way alter, the  
30 capacity of parties to any reinsurance agreement to renegotiate the  
31 agreement.

32 **[e]** f. The commissioner [may, in his discretion,] has the  
33 discretion to allow credit for reinsurance if the reinsurance is ceded  
34 to an assuming insurer not meeting the requirements of subsection a.,  
35 b., c. [or], d., or e. of this section but only with respect to the  
36 insurance of risks located in jurisdictions where such reinsurance is  
37 required or provided by applicable law or regulation of that  
38 jurisdiction; or

39 **[f]** g. The commissioner [may, in his discretion,] has the  
40 discretion to allow credit for reinsurance if the reinsurance is ceded  
41 to an assuming insurer not meeting the requirements of subsection a.,  
42 b., c. or d. of this section but only if the assuming insurer holds  
43 surplus or equivalent in excess of \$250 million. In determining  
44 whether credit should be allowed, the commissioner shall consider  
45 the following: (1) that the reinsurer has a secure financial strength  
46 rating from at least two nationally recognized statistical rating  
47 organizations deemed acceptable by the commissioner; (2) the  
48 domiciliary regulatory jurisdiction of the assuming insurer; (3) the

1 structure and authority of the domiciliary regulator with regard to  
2 solvency regulation requirements and the financial surveillance of  
3 the reinsurer; (4) the substance of financial and operating standards  
4 for reinsurers in the domiciliary jurisdiction; (5) the form and  
5 substance of financial reports required to be filed by the reinsurer in  
6 the domiciliary jurisdiction or other public financial statements filed  
7 in accordance with generally accepted accounting principles; (6) the  
8 domiciliary regulator's willingness to cooperate with United States  
9 regulators in general and the commissioner, in particular; (7) the  
10 history of performance by reinsurers in the domiciliary jurisdiction;  
11 (8) the reinsurer's or an affiliate's use of in-State professional service  
12 providers related or unrelated to the reinsurance, including, but not  
13 limited to, attorneys, accountants, managers, actuaries, brokers or  
14 intermediaries; (9) any documented evidence of substantial problems  
15 with the enforcement of valid United States judgments in the  
16 domiciliary jurisdiction; and (10) any other matters deemed relevant  
17 by the commissioner. The commissioner shall give appropriate  
18 consideration to insurer group ratings that may have been issued. The  
19 commissioner may, in lieu of granting full credit under this  
20 subsection, reduce the amount required to be held in trust under  
21 subsection d. of this section.

22 The provisions of this subsection shall apply only to reinsurance  
23 contracts entered into or renewed on or after the effective date of  
24 P.L.2011, c.39, except that the provisions applicable to life  
25 reinsurance contracts shall not become effective until the earlier of  
26 24 months from the effective date of P.L.2011, c.39, or the  
27 implementation of principles-based standards of life insurance  
28 reserving by the National Association of Insurance Commissioners.

29 **[g]** h. If the assuming insurer is not licensed or accredited to  
30 transact insurance or reinsurance in this State, the credit permitted by  
31 subsections c. and d. of this section shall not be allowed unless the  
32 assuming insurer agrees in the reinsurance agreements: (1) that in  
33 the event of the failure of the assuming insurer to perform its  
34 obligations under the terms of the reinsurance agreement, the  
35 assuming insurer, at the request of the ceding insurer, shall submit to  
36 the jurisdiction of any court of competent jurisdiction in any state of  
37 the United States, shall comply with all requirements necessary to  
38 give such court jurisdiction, and shall abide by the final decision of  
39 such court or any appellate court in the event of an appeal; and (2) to  
40 designate the commissioner or a designated attorney as its true and  
41 lawful attorney upon whom may be served any lawful process in any  
42 action, suit or proceeding instituted by or on behalf of the ceding  
43 company. This provision is not intended to conflict with or override  
44 the obligation of the parties to a reinsurance agreement to arbitrate  
45 their disputes, if such an obligation is created in the agreement.  
46 (cf: P.L.2011, c.39, s.4)

1       3. Section 5 of P.L.1993, c.243 (C.17:51B-4) is amended to read  
2 as follows:

3       5. a. The commissioner may promulgate rules and regulations  
4 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
5 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes  
6 of this act.

7       b. The commissioner is further authorized to adopt rules and  
8 regulations applicable to reinsurance arrangements described in this  
9 subsection.

10       (1) A regulation adopted pursuant to this subsection, shall apply  
11 only to reinsurance relating to:

12       (a) life insurance policies with guaranteed nonlevel gross  
13 premiums or guaranteed nonlevel benefits;

14       (b) universal life insurance policies with provisions resulting in  
15 the ability of a policyholder to keep a policy in force over a secondary  
16 guarantee period;

17       (c) variable annuities with guaranteed death or living benefits;

18       (d) long-term care insurance policies; or

19       (e) other life and health insurance and annuity products as to  
20 which the NAIC adopts model regulatory requirements with respect  
21 to credit for reinsurance.

22       (2) A regulation adopted pursuant to subparagraphs (a) or (b) of  
23 paragraph (1) of this subsection, may apply to any treaty containing:

24       (a) policies issued on or after January 1, 2022;

25       (b) policies issued prior to January 1, 2022, if risk pertaining to  
26 those policies is ceded in connection with the treaty, in whole or in  
27 part, on or after January 1, 2022; or

28       (c) a treaty containing policies as described in both (a) and (b)  
29 above.

30       (3) A regulation adopted pursuant to this subsection may require  
31 the ceding insurer, in calculating the amounts or forms of security  
32 required to be held under regulations promulgated under this  
33 authority, to use the Valuation Manual adopted by the NAIC under  
34 section 11B(1) of the NAIC Standard Valuation Law, including all  
35 amendments adopted by the NAIC and in effect on the date as of  
36 which the calculation is made, to the extent applicable.

37       (4) A regulation adopted pursuant to this subsection shall not  
38 apply to cessions to an assuming insurer that:

39       (a) meets the conditions set forth in section 2F of the Credit for  
40 Reinsurance Model Law in this State or, if this State has not adopted  
41 provisions substantially equivalent to section 2F of the Credit for  
42 Reinsurance Model Law, the assuming insurer is operating in  
43 accordance with provisions substantially equivalent to section 2F of  
44 the Credit for Reinsurance Model Law in a minimum of five other  
45 states; or

46       (b) is certified in this State or, if this State has not adopted  
47 provisions substantially equivalent to section 2E of the Credit for

1 Reinsurance Model Law, certified in a minimum of five other states;  
2 or  
3 (c) maintains at least \$250 million in capital and surplus when  
4 determined in accordance with the NAIC Accounting Practices and  
5 Procedures Manual, including all amendments thereto adopted by the  
6 NAIC, excluding the impact of any permitted or prescribed practices;  
7 and is  
8 (i) licensed in at least 26 states; or  
9 (ii) licensed in at least 10 states, and licensed or accredited in a  
10 total of at least 35 states.  
11 (5) The authority to adopt regulations pursuant to this subsection  
12 b. of this section shall not prohibit the authority of the commissioner  
13 to adopt regulations pursuant to subsection a. of this section.  
14 (cf: P.L.1993, c.243)

15

16 4. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill updates current law on credit for reinsurance by  
22 providing credit for reinsurance ceded by a domestic insurer to an  
23 assuming insurer that has its head office domiciled and licensed in a  
24 reciprocal jurisdiction. The bill eliminates reinsurance collateral  
25 requirements and local presence requirements for reinsurers in the  
26 European Union and United Kingdom that maintain minimum capital  
27 and surplus requirements. Under the bill, the supervisory authority of  
28 the assuming insurer is to confirm to the commissioner on an annual  
29 basis that the assuming insurer complies with certain requirements.  
30 The commissioner may revoke or suspend the eligibility of an  
31 assuming insurer if it no longer meets one or more of the  
32 requirements

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 6169**

**STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2021

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 6169.

This bill updates current law on credit for reinsurance by providing credit for reinsurance ceded by a domestic insurer to an assuming insurer that has its head office domiciled and licensed in a reciprocal jurisdiction. The bill eliminates reinsurance collateral requirements and local presence requirements for reinsurers in the European Union and United Kingdom that maintain minimum capital and surplus requirements. Under the bill, the supervisory authority of the assuming insurer is to confirm to the commissioner on an annual basis that the assuming insurer complies with certain requirements. The commissioner may revoke or suspend the eligibility of an assuming insurer if it no longer meets one or more of the requirements.