

**17:51B-1. Definitions**

1. For purposes of this act:

"Commissioner" means the Commissioner of 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.

L.1993,c.243,s.1.

**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 trustee account representing the assuming insurer's liabilities attributable to business written in the United States and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000.

(2) In the case of a group of insurers, which group includes individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which 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 trustee 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. The commissioner may, in his discretion, 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 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

f. The commissioner may, in his discretion, 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 \$250,000,000. 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.

g. 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.

L.1993, c.243, s.2; amended 2011, c.39, s.4.

**17:51B-3. Reduction in liability for reinsurance ceded**

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

- a. Cash;
- b. Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;

- c. Clean, irrevocable, evergreen, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31st of the year for which the filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming qualified United States financial institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first, unless the issuer has been declared insolvent under applicable statutory or regulatory provisions; or
- d. Any other form of security acceptable to the commissioner.

L.1993,c.243,s.3.

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

5. 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.

L.1993,c.243,s.5.

