CREDIT FOR REINSURANCE MODEL LAW

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Section 1. Purpose

The purpose of this Act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. The legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the legislature hereby provides a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this Act, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The legislature declares tr a881v Tc 0.business of insurance in accordance with 15 U.S.C. §§ 101

Section 2. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reinsurance ceded only when the reinsurer meets the requirements of Subsections A provided further, that the commissioner may adopt by regulation pursuant to Section relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amo reinsurance arrangements described in Section 5B; and/or (3) the circumstances pursu eliminated.

Drafting Note: This new regulatory consistency standard is intended to strongly consider adopting material respects to NAIC adopted model regulations in the handling and treatment of such reinsurance

Credit shall be allowed u

(c) 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 trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(3) The following requirements apply to the following categories of assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000, except as provided in Paragraph 3(b) of this subsection.

(b) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissio

prepared by independent public accountants, of each underwriter member of the group.

(d) In the case of a group of incorporated underwriters under common administration, the group shall:

(i) Have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation;

(ii) Maintain agg.8 (in)n0 Td ( )Tj -0.00d ( )Tj 8 (in)n0 Td ( )Tj -12 (up4-7 (r)-1 Td ( )97i

(5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the commissioner.

(a) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3, or in a multibe

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

H. If the assuming insurer is not licensed, accredited or certified 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) (a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(b) 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 insurer.

(2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

H) Trrarn on

I. If the assuming insurer does not meet the require-1.157 T395.4 2-1.g

(c) The commission

B. The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangeme T2CID 0 >>BDC 0.008 Tc -0.021 Tw 8.04 -

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KEY:

MODEL ADOPTION : States that have citations identified in this column have adopted the most recent version of the NAIC model in a substantially similar manner. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY : Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column (and only nothing listed in the Model Adoption column) have not adopted the most recent version of the NAIC model in a substantially similar manner.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Minnesota		MINN. STAT. §§ 60A.091 to 60A.097 (1991/2018) (previous version of model).
Mississippi		MISS. CODE ANN. §§ 83-19-151 to 83-19-157 (1991/2017) (previous version of model).
Missouri		MO. REV. STAT. § 375.246 (1990/2013) (previous version of model); BULLETIN 2004-03 (2004).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Oklahoma		

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington		WASH. REV. CODE ANN. §§ 48.12.400 to 48.12.499 (1947/2015) (previous version of model).
West Virginia		W. VA. CODE § 33-4-15a (1992/2018) (previous version of model)

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In 1982 a new task force was appointed to look at reinsurance issues. **1983 Proc. I 13.** In the course of several insolvencies, the regulators of one state learned a great deal about reinsurance activities which may be highly questionable or fraudulent. They prepared a report with proposals for dealing with insurance and reinsurance fraud. **1983 Proc. I 836-837.**

The proposals included development of a model law on reinsurance. **1983 Proc. I 837, 1983 Proc. II 845.**

A draft of the model was published in 1983. It bore little resemblance to the version adopted six months later. Attendees at the December 1983 meeting were urged to provide comments on the model. **1984 Proc. I 743-745.**

A group of regulators met in early 1994 and agreed that a number of questions pertaining to the Credit for Reinsurance Model Law had not yet been addressed or fully resolved. **1994 Proc. 1st Quarter 636.**

A suggestion was made to include provisions from an earlier NAIC proposal for a federal non-U.S. insurer act in to the Credit for Reinsurance Model Law. The federal proposal provided that no credit for reinsurance would be allowed unless the reinsurer was reviewed by the NAIC, even though the ceding company held collateral. The working group agreed to recommend that provisions of the federal bill not be included in the model act. **1994 Proc. 4th Quarter 941.**

After the model revisions had been adopted by the Executive Committee, a commissioner suggested that the drafting could be improved. The model was held at the Plenary until questions related to form could be resolved. **1996 Proc. 2nd Quarter 9.**

insurers. The author saidthe proposed language would permit the U.S. regulator to defer to an alien liquidator in the disposition of trust assets of an insolvent alien reinsurer if that was the regulator's preference. She said the regulator's position would be stronger if the statute included the language, but there could be no assurance that the proposed languag would be sufficient to preserve the U.S. regulator's access to trust assets. Assurance would only come with amendment to Section 304 of the federal Bankruptcy Code to give the U.S. regulator priority in exercising supervisory authority over the trust over the alien liquidator seeking to marshal all assets of the insoleking 57 (n)5 6ll a aparty suggesd the ar the new Section objective had been to introduce new language to clarify the legislative intent underlying the credit for reinsuranas statute respects the collateral required to secure the obligations of alien reinsurers operating in the United Sta basis of multiple beneficiary trust funds, as provided in Section 2D of the model law. She indicated that at a recent hearing objecti had been raised iinsn, ( )2.Dn

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Section 2B

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Section 2 (cont.)

D. The model law adopted granted credit where the assuming insurer maintained a trusteed account in the United States which included the insurer's liabilities and a trusteed surplus. The committee considered capital and surplus requirements as a threshold for the trusteed surplus but concluded that, in view of current industry practices and conditions, higher standards were mandated. Some insurers commented that the amounts were so high that many alien reinsurers could not compete in the U.S. market. The drafters concluded that the $20,000,000 amount was necessary to maintain the level of security provided by the other provisions of the law. **1984 Proc. II 844.**

Originally the model required the trust fund be maintained in a U.S. bank or trust company. This was changed to "qualified financial institution" in 1987. **1987 Proc. II 444.**

The drafters considered changes to this section to deal with "joint and several" characteristics of the trust, but decided to do additional research before making any changes to the model. **1989 Proc. II 727-728.**

Just before adoption of the amended model in September 1989, the working group and then the task force considered adding a second paragraph under Subsection D to include incorporated underwriters. Considerable discussion on this proposal included the opinion that the language was unclear, and that addition of this paragraph would give special advantage to alien insurers. Some felt the proposal should be voted down because it was a last minute proposal. The proposal was narrowly approved. **1990 Proc. IB 891, 895.**

The parent committee again considered the appropriateness of the addition of Subsection D(2). The advisory committee objected to giving alien insurers a right that United States companies did not enjoy abroad, and opined that the international aspects of this decision had not been considered. The committee chair replied that, in fact, the international aspects had been considered and noted that an open market was, in the long term, in the best interest of the United States market. **1990 Proc. IB 851.**

Before adoption the committee struck a phrase in Subsection D(2), "or some other national regulation" and replaced it with a phrase requiring the incorporated insurers to submit to the state's authority to examine its books and records. **1990 Proc. IB 851.**

The NAIC president clarified before adoption at the special plenary session that the incorporated insurers would submit to the authority of the states and bear the cost of any examination. **1990 Proc. IA 12.**

Some of the commissioners were concerned about the authority granted in Subsection D(2). They clarified that this applies only to reinsurance transactions, not to surplus lines. **1990 Proc. IA 13.**

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Section 2D (cont.)

The chair asked if eliminating offset provision from retrocessional covers was a viable method of alleviating the concerns of regulators regarding the potentially negative impact of offset provisions on their ability to recover amounts for which alien reinsurers had taken credit in their U.S. trust funds. One company representative said in his opinion very few reinsurers could be expected to willingly forego the protection afforded by offset provisions, and that the elimination of offset clauses would inevitably lead to a general increase in the cost of reinsurance to reflect the attendant increase in the claims burden that reinsurers would have to bear in the absence of traditional offset provisions. He observed that the ultimate effect of any loss of offset rights would be to weaken reinsurers' financial conditions generally, and said that to do so would be in the interest of neither the buyers of reinsurance protection nor of the regulator. **1994 Proc. 4th Quarter 959.**

An interested party opined that the current model law requirement that alien reinsurers fund an amount equal to U.S. liabilities plus $20 million did not leave a very substantial margin for unrecoverability of obligations of the alien reinsurer's retrocessionaires. He observed that the risk-based capital requirements made it impossible for any state to approve a new reinsurer having only $20 million in policyholder surplus. **1994 Proc. 4th Quarter 959.**

An early 1995 draft of the model act contained a new Subsection E to address reinsurance ceded to an unauthorized alien

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Section 2D (cont.)

E. Subsection E remains substantially unchanged since it was first adopted, except for the references to other subsections. **1984 Proc. II 838.**

The drafters recognized a special problem for reinsurers in many non-U.S. jurisdictions and carved out a limited exception to the credit requirements. A ceding insurer may take credit where the assuming insurer does not meet the standards of the prior subsections with regard to risks located in jurisdictions where the reinsurance is required by that jurisdiction. **1984 Proc. II 844.**

F. The assuming insurer qualifying for credit must also agree to submit to the jurisdiction of U.S. courts in the event of its failure to pay amounts due under contracts, and to designate the commissioner as its attorney for the purpose of serving process. A few insurers were concerned that this subsection might alter the terms of an arbitration clause in the reinsurance agreement. The drafters added the final sentence to remove the potential for any unintended conflict with arbitration clauses. **1984 Proc. II 844.**

A correction made in 1985 clarified that the last sentence of the subsection applied both to Paragraphs (1) and (2). **1986 Proc. I 812.**

The working group considered a proposal that the model bill specify certain provisions which must be included in a reinsurance contract. The advisory committee felt it was not feasible to set out all of the minimum standards but the model does include certain standards in Section 2F. **1989 Proc. I 949.**

Section 3. Asset or Reduction From Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer Not Meeting the Requirement of Section 2

The model adopted allowed a reduction from liability for cessions to assuming insurers not satisfying the requirements of Section 2, but only to the extent of security provided by, or on behalf of, the insurer taking credit. The model identified the forms of security accepted in most states. The model as originally adopted only accepted letters of credit issued or confirmed by a bank that is a member of the federal reserve system. **1984 Proc. II 844.**

An amendment adopted in September 1989 added the words “by a domestic wddeeu foe q92y0 -1.r6 l848 (e T)-1A8 (d)-7 (it.).1 (s)-

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Section 3C (cont.)

Section 3C contained a reference to the definition for letters of credit; however, the version adopted in 1990 contained a reference to the definition in Section 4 which was misplaced. A correction was made in June 1990. **1990 Proc. II 776.**

Section [ ] Credit Allowed a Foreign Ceding Insurer [Optional]

As early as August 1993, the chair of the working group considering credit for reinsurance issues received a suggestion to add a new section to the model act that would allow credit to a foreign ceding insurer to the extent credit had been allowed by the ceding insurer's state of domicile. **1994 Proc. 1st Quarter 639.**

In early 1994, the Credit for Reinsurance Working Group began discussing further amendments to the model act. A group of technical advisors wrote a letter urging the viewpoint that credit for reinsurance should be determined by the state of domicile of the ceding insurer and that, if that state is accredited by the NAIC, other states should recognize the credit allowed by the state of domicile. The group viewed this as a very important principle. The writers said it seemed to them unnecessary and undesirable to have a separate and inconsistent determination of statutory surplus made by each state in which the ceding insurer is licensed. **1994 Proc. 1st Quarter 640.**

One regulator restated the position taken by his state on the question of application of its law to licensed foreign ceding companies as well as domestic companies. He said his state supported the idea of uniformity of regulation from one state to another insofar as possible, but did not want to relinquish the right to take regulatory action against a foreign company whose reinsurance arrangements were deemed to be unsatisfactory. Another regulator pointed out that the commissioner was permitted the discretion to waive the $20 million surplus stipulated in the model. **1994 Proc. 1st Quarter 637.**

A regulator suggested that language be added to the proposed section setting forth criteria by which a state might decline to allow credit. **1994 Proc. 1st Quarter 637.**

A later meeting was held to consider further the concept of extraterritorial application of the credit for reinsurance law. Language was drafted that would provide a procedure to be followed by those states that chose to apply their credit for reinsurance law to licensed foreign companies as well as domestic companies. Technical resource advisors expressed concern with the basic premise. They expressed the strong belief that credit for reinsurance is a fundamental element in the determination of the financial condition of the ceding insurer, and should be determined by the insurer's state of domicile. They urged regulators not to change the feature of the current model that addresses credits allowed domestic insurers and does not address foreign insurers. **1994 Proc. 2nd Quarter 877-879.**

A draft of the Credit for Reinsurance Model Law was considered at a September 1994 meeting of regulators. A drafting note was suggested for the new section on regulation of reinsurance of foreign carriers by non-domiciliary jurisdictions, and one regulator wrote a letter of objection to the drafting note. The regulator stated that the drafting note contained language that implied a consensus of opinion which, in his view, did not exist among regulators as respects extraterritorial application of the act. At his suggestion these words were deleted at the end of the first sentence: "…on the premise that regulation of the financial condition of foreign insurers, including credit for reinsurance, is best left to their states of domicile." The letter writer said the premise was presumptuous in its far-reaching implications, i.e., that it is "best" for the individual states to relinquish, or to abdicate, their regulatory responsibilities regarding the financial condition of foreign insurers doing business within their borders. **1994 Proc. 3rd Quarter 783-784.**

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Section 4. Qualified U.S. Financial Institutions

This section was added to the model in 1987. Changes to the types of financial institutions that could maintain trust funds or issue letters of credit resulted in the need for this definition. **1987 Proc. II 447.**

A. The Reinsurance and Anti-

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