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)

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:

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

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.

state authorities having regulatory authority over banks and trust companies.
(cf: P.L.1993, c.243, s.1)

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

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

(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 subsubparagraphs (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. , c. (C.) (pending before the Legislature as this bill) 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 subsubparagraphs (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. , c. (C.) (pending before the Legislature as this bill), 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.

[e**]** f. The commissioner **[**may, in his discretion,**]** 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., 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

[f**]** g. The commissioner **[**may, in his discretion,**]** 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.

[g**]** 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.
(cf: P.L.2011, c.39, s.4)

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

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 b. of this section shall not prohibit the authority of the commissioner to adopt regulations pursuant to subsection a. of this section. (cf: P.L.1993, c.243)

4. This act shall take effect immediately.

STATEMENT

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.