

REINSURANCE INTERMEDIARY MODEL ACT

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Section 1. Short Title

This Act may be cited as the Reinsurance Intermediary Act.

Section 2. Definitions

As used in this Act:

- A. “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- B. “Controlling person” means a person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.
- C. “Insurer” means a person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.
- D. “Licensed producer” means a person licensed under [insert reference to state producer licensing law] to sell, solicit or negotiate insurance.
- E. “Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections F and G of this section.
- F. “Reinsurance intermediary-broker” (RB) means a person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without acting as a RM on behalf of the insurer.
- G. “Reinsurance intermediary-manager” (RM) means a person, firm, association or corporation, whether known as a RM, manager or other similar term, who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department or underwriting office) and acts as an agent for the reinsurer except the following:

- (1) An employee of the reinsurer;
 - (2) A U.S. manager of the U. S. branch of an alien reinsurer;
 - (3) An underwriting manager that, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and that is not compensated based on the volume of premiums written.
 - (4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance but only if the group association, pool or organization of insurers (as distinguished from its members) is subject to examination by the [Insurance Commissioner] of the state in which the manager's principal business office is located.
- H. "Reinsurer" means a person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.
- I. "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this Act.
- J. Qualified U. S. financial institutions:
- For purposes of this Act, a "qualified U. S. financial institution" means an institution that:
- (1) Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
 - (2) Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and
 - (3) Has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

Section 3. Licensure

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

- C. The commissioner may require a resident RM subject to Subsection B to:
- (1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

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

- (2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.
- D. (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation that has complied with the requirements of this Act. A license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.
- (2) The commissioner shall issue a nonresident reinsurance intermediary license if:
 - (a) The person is currently licensed as a resident reinsurance intermediary or insurance producer and in good standing in his or her home state;
 - (b) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];
 - (c) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of that application, a completed application deemed appropriate by the commissioner; and
 - (d) The person's home state awards nonresident licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act"), states should not require an applicant for a non-resident license to satisfy any additional requirements for a license except as allowed by the Act. Incorporation into this model law of the Gramm-Leach-Bliley Act provisions with respect to non-resident administrative licensing procedures should not be read to imply that corrective action was required to bring this model law into compliance with the Gramm-Leach-Bliley Act. The changes were made solely to ensure and to clarify that the licensing provisions of this model law are consistent with the language of the Gramm-Leach-Bliley Act.

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

Section 4. Required Contract Provisions—Reinsurance Intermediary—Brokers

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

- A. The insurer may terminate the RB's authority at any time.

- B. The RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the RB, and remit all funds due to the insurer within thirty (30) days of receipt.
- C. All funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank that is a qualified U.S. financial institution as defined herein.
- D. The RB will comply with Section 5 of this Act.
- E. The RB will comply with the written standards established by the insurer for the cession or retrocession of all risks.
- F. The RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 5. Books and Records—Reinsurance Intermediary Brokers

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

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

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

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

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

Section 7. Required Contract Provisions—Reinsurance Intermediary—Managers

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

- A. The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.
- B. The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.
- C. All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank that is a qualified U.S. financial institution as defined herein. The RM may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents.
- D. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transactions showing:
 - (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
 - (3) Reporting and settlement requirements of balances;
 - (4) Rate used to compute the reinsurance premium;
 - (5) Names and addresses of reinsurers;
 - (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
 - (7) Related correspondence and memoranda;
 - (8) Proof of placement;
 - (9) Details regarding retrocessions handled by the RM, as permitted by Section 9D of this Act, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (10) Financial records, including but not limited to, premium and loss accounts; and

- (11) When the RM places a reinsurance contract on behalf of a ceding insurer:
 - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

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

- E. The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.
- F. The contract cannot be assigned in whole or in part by the RM.
- G. The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.
- H. Rates, terms and purposes of commissions, charges and other fees which the RM may levy against the reinsurer are set forth.
- I. If the contract permits the RM to settle claims on behalf of the reinsurer:
 - (1) All claims will be reported to the reinsurer in a timely manner;
 - (2) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (a) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
 - (b) Involves a coverage dispute;
 - (c) May exceed the RM's claims settlement authority;
 - (d) Is open for more than six (6) months; or
 - (e) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
 - (3) All claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis;
 - (4) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
- J. If the contract provides for a sharing of interim profits by the RM, interim profits will not be paid until one year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 9C of this Act.
- K. The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

- L. The reinsurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the RM.
- M. The RM will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.
- N. Within the scope of its actual or apparent authority the acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Section 8. Prohibited Acts

The RM shall not:

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

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

- A. A reinsurer shall not engage the services of any person, firm, association or corporation to act as a RM on its behalf unless the person is licensed as required by Section 3B of this Act.
- B. The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.
- C. If a RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.
- D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.
- E. Within thirty (30) days of termination of a contract with a RM, the reinsurer shall provide written notification of termination to the commissioner.

- F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by the [insert citation to Holding Company Act] or, if applicable, [insert citation to state law equivalent to the Broker Controlled Insurer Act].

Section 10. Examination Authority

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

Section 11. Compliance with Orders

- A. A RB or RM shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of non-privileged documents by the RB or RM, or the testimony of an employee or other individual otherwise under the control of the RB or RM with respect to any reinsurance transaction for which it acted as a RB or RM.
- B. Compliance shall be subject to the right of the RB or RM, and the parties to the reinsurance transaction, to object to the court or arbitration panel concerning the nature or scope of the documents or testimony or the time within which it must comply with the order. Failure to comply with the order shall be deemed to be a material non-compliance with this Act. However, in no event shall this section be construed to require more than one appearance by the same witness in a single action or arbitration.

Section 12. Penalties and Liabilities

- A. If the commissioner determines that the reinsurance intermediary or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the commissioner may order:
 - (1) For each separate violation, a penalty in an amount not exceeding \$5,000;
 - (2) Revocation or suspension of the reinsurance intermediary's license; and
 - (3) If it was found that because of such material non-compliance that the insurer or reinsurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the reinsurer or insurer and its policyholders and creditors or seek other appropriate relief.
- B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to [insert state's rehabilitation or liquidation statute], and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Drafting Note: If state law does not otherwise provide, amend the bracketed citation in the preceding paragraph to include the rehabilitation or liquidation statute of any reciprocal state. This is intended to codify the standing of a receiver to maintain a civil action in a reciprocal state.

- C. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
- D. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

Section 13. Reciprocity

- A. The insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by Section 3 of this Act, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
- B. A nonresident reinsurance intermediary's satisfaction of any applicable home state continuing education requirements, if any, for licenses insurance producers or reinsurance intermediaries shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers or reinsurance intermediaries from this state on the same basis.

Drafting Note: States are encouraged to eliminate any licensing and appointment retaliatory fees. In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act"), states should not require nonresident fees that are so disparate from the resident fees that they impose a barrier to entry. Such fees would be prohibited under Public Law 106-102.

Section 14. Service of Process

A reinsurance intermediary, by accepting licensure in this state, is deemed to have consented to the jurisdiction of the commissioner and of the courts of this state with respect to all activities conducted under the license, and to have designated the commissioner as its agent for service of process. Each licensed reinsurance intermediary shall furnish the commissioner with the name and address of a designated contact resident of this state to whom notices or orders of the commissioner or process affecting the reinsurance intermediary may be forwarded. The licensee shall promptly notify the commissioner in writing of every change in its designated contact for services of process, and such changes shall not become effective until acknowledged by the commissioner.

Section 15. Rules and Regulations

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

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

Section 16. Effective Date

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

Chronological Summary of Actions (all references are to the Proceedings of the NAIC)

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

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

1993 Proc. I 1128-1129, 1131, 1137-1138 (amended, reprinted and adopted by parent committee).

1993 Proc. 2nd Quarter 12, 102 (adopted by executive and plenary).

2001 Proc. 2nd Quarter 11, 14, 835, 943-944, 964-966 (amended).

2006 Proc. 2nd Quarter 40, 90 (amended).