



A BILL

To enact the Reinsurance Regulatory Modernization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reinsurance Regulatory Modernization Act of 2009."

SEC. 2. NAIC REINSURANCE SUPERVISION REVIEW BOARD.

Two classes of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers. In order to provide effective regulation by the States of these new classes of reinsurers, the National Association of Insurance Commissioners (NAIC) Reinsurance Supervision Review Board is hereby given authority to:

- (a) evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the NAIC and adopted by the Board; and
- (b) evaluate the reinsurance supervisory regimes of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;
- (c) develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and
- (d) preserve the confidentiality of supervisory information within the Board's control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

SEC. 3. CORPORATE STATUS.

The Board shall-

- (a) be a nonprofit corporation owned by or affiliated with the NAIC;
- (b) have succession until dissolved by the NAIC;
- (c) not be an agency or establishment of the United States or any State Government; and



(d) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the laws of its state of incorporation.

SEC. 4. MEMBERSHIP.

The Board shall be created by passage of this Act. The Board shall be administered by the NAIC as a transparent, publicly accountable entity composed of State insurance regulators, with director eligibility open to all State insurance commissioners, directors and superintendents for appointment to the Board.

SEC. 5. PURPOSE OF ACT.

The purpose of the Act is as follows-

(a) Two classes of reinsurers in the United States are hereby created under a framework that allows for a State with the appropriate regulatory capacity to be the sole U.S. regulator of a reinsurer assuming business from a United States ceding insurer: National Reinsurers and Port of Entry Reinsurers. Each shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States. National Reinsurers shall be licensed by the Home State and Port of Entry Reinsurers shall be certified by the Port of Entry State.

(b) A certification mechanism is hereby authorized so that those States that have the resources, expertise and experience to regulate reinsurance on a cross-border basis can do so as a Home State or Port of Entry Supervisor, which shall have exclusive jurisdiction over its reinsurers' reinsurance business.

(1) The NAIC shall develop and recommend criteria, subject to approval by the Board, for a State to qualify as a Home State or Port of Entry Supervisor. Any such criteria relating to ceded premium volume shall not unfairly discriminate against otherwise qualified small States from approval as a Home State or Port of Entry Supervisor.

(2) The Board shall evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(3) The Board shall further evaluate the reinsurance supervisory systems of non-U.S. Jurisdiction Supervisors to determine the appropriate supervisory recognition approach for such jurisdictions, and create a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(c) Reinsurers shall have a minimum capital and surplus requirement of \$ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$ 250 million and a central fund containing a balance of at least \$ 250 million. The capital and surplus requirement of \$ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be



periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(d) A Host State shall grant credit for reinsurance ceded by one of its domiciled insurers to a National Reinsurer or Port of Entry Reinsurer, and the Host State Supervisor shall retain the same authority it has under existing State law to determine whether the reinsurance agreement transfers risk.

(e) In addition to the powers and responsibilities of the Board specifically set forth under the provisions of this Act, the Board shall have all powers necessary and appropriate to carry out the duties of the Board that are consistent with this Act.

SEC. 6. EVALUATION AND CERTIFICATION BY BOARD.

(a) Home State and Port of Entry State Standards. The NAIC shall recommend uniform standards, subject to approval by the Board, for reinsurance supervisory systems of Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry State Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this section and all other costs of the establishment and operation of the Board.

(e) Certification of Home State and Port of Entry Supervisors. If, upon conducting of an evaluation under this section with respect to the reinsurance supervisory system of any State, the Board determines that the system qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner.

(f) Certification of Qualified Non-U.S. Jurisdictions. If, upon conducting of an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the system qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner.

(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the NAIC shall provide appropriate advance public notice and opportunity for public



comment.

(h) A Port of Entry State is hereby authorized to enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board.

SEC. 7. CREDIT FOR REINSURANCE AND COLLATERAL REQUIREMENTS.

Credit for reinsurance ceded by a domestic insurer to a reinsurer shall be allowed with respect to National and Port of Entry Reinsurers only to the extent that security is held in the United States in accordance with the following requirements-

(a). The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements. The rating and corresponding collateral calculation shall be as follows:

<u>Ratings</u>	<u>Collateral Required</u>
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	75%
Vulnerable – 5	100%

(b) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, 75% collateral shall be required and for those in the Vulnerable – 5 tier, 100% collateral shall be required. The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer’s jurisdiction.

(c) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

(1) The reinsurer’s financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission or other successor regulatory agency, which shall correspond to the maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures.



- (2) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;
 - (3) The business practices of the reinsurer in dealing with its ceding insurers;
 - (4) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
 - (5) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;
 - (6) The reinsurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;
 - (7) Regulatory actions against the reinsurer;
 - (8) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (9) below;
 - (9) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinion in accordance with standards and procedures recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;
 - (10) The liquidation preference of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (11) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. Entrance into such an arrangement or procedure that involves one or more U.S. ceding insurers shall result in an assignment of a Vulnerable-5 rating;
 - (12) Any other information deemed relevant by the Home State or Port of Entry Supervisor.
- (d) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and approved by the Board.
- (e) In order to facilitate the prompt payment of claims, a National Reinsurer or a Port of Entry Reinsurer would not be required to post collateral for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a defined catastrophic occurrence as recognized by the Home State or Port of Entry Supervisor. The one year deferral period is only applicable with respect to lines of property



and casualty insurance, and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(f) The Home State or Port of Entry Supervisor shall require all reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(g) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements as all other reinsurance transactions.

(h) Change in or Revocation of Rating. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(1) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a reinsurer's rating at any time if a reinsurer fails to meet its obligations or collateral requirements under this proposal, or if other financial or operating results of the reinsurer, or documented significant delays in payment by the reinsurer, lead the reinsurer's supervisor to reconsider the reinsurer's ability or willingness to meet its contractual obligations.

(2) If the Home State Supervisor's or Port of Entry Supervisor's rating of a reinsurer improves, the reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but contracts in force on or before the effective date of the improved rating shall remain subject to the previously applicable collateral requirements. If the Home State Supervisor's or Port of Entry Supervisor's rating of a reinsurer declines, the reinsurer shall be required to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(3) Notwithstanding the change or withdrawal of a reinsurer's rating, U.S. ceding insurers may continue to take financial statement credit for a period of three months for all reinsurance ceded to that reinsurer for which they were previously allowed credit, unless the reinsurance is deemed uncollectible.

SEC. 8. PREEMPTION OF INCONSISTENT STATE LAWS.

Preemption of Inconsistent State Laws. All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act. This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This section may not be construed to preempt any State law, rule, or regulation that regulates credit for reinsurance for reinsurers other than National Reinsurers or Port of Entry Reinsurers, as defined under this Act.

SEC. 9. CONSULTATION WITH FEDERAL AND STATE AGENCIES.

The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and



information and for issuing reports regarding reinsurance.

SEC. 10. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (1) Board. The term “Board” means the NAIC Reinsurance Supervision Review Board authorized by section 2.
- (2) Ceding insurer. The term “ceding insurer” means an insurer that purchases reinsurance.
- (3) Domiciled. The term “domiciled” means, with respect to an insurer or reinsurer, to be incorporated or entered through, and licensed.
- (4) Insurance. The term “insurance” means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.
- (5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by another insurer that is licensed to transact insurance or reinsurance in a jurisdiction. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.
- (6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any agency, board, commission, or other body that has primary regulatory authority over the business of reinsurance for the State or jurisdiction, and the legal and operational framework under which that authority is exercised.
- (7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, any other territory or possession of the United States.
- (8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.
- (9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the jurisdiction in which the insurer is incorporated or organized.
- (10) Home State. The term “Home State” means the qualifying state where the national reinsurer is licensed and domiciled.
- (11) Home State Supervisor. The term “Home State Supervisor” means the state insurance regulatory authority of a national reinsurer.



(12) Host State. The term “Host State” means the domicile of the ceding company.

(13) Host State Supervisor. The term “Host State Supervisor” means the ceding company’s domestic state insurance regulatory authority.

(14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of insurance regulators from the 50 states, the District of Columbia and the five U.S. territories.

(15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and approved by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.

(16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of a reinsurer from a non-U.S. jurisdiction.

(17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is certified in a port of entry state and approved by such state to provide creditable reinsurance to the U.S. market. Certification by a port of entry state does not provide independent authority to transact the business of insurance in the United States.

(18) Port of Entry State. The term “Port of Entry State” means the state where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to the U.S. market.

(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the state insurance regulatory authority of the port of entry state.

(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.