

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN ASSEMBLY MAY 2, 2006

AMENDED IN ASSEMBLY APRIL 20, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2400

Introduced by Assembly Member Benoit

February 23, 2006

An act to amend Sections 922.2, 922.5, 922.6, and 1781.10 of, and to add Section 1781.14, to the Insurance Code, relating to reinsurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, as amended, Benoit. Reinsurance.

Existing law provides that the Insurance Commissioner regulates the business of reinsurance.

This bill would make minor changes in the law regarding credit for reinsurance, insolvency of a ceding company, assets or deductions for reinsurance, and foreign ceding insurers.

This bill would also provide that during an examination of a reinsurance intermediary, all documents disclosed may be used by the commissioner, and given confidential treatment, as specified. This bill would further provide that the examination shall be at the expense of the insurance intermediary, and that the commissioner may revoke the license of the insurance intermediary for a refusal to promptly pay the examination expense when due. This bill would also provide the manner in which insurance intermediaries must comply with court or arbitration panel orders regarding production of documents or witnesses, as specified.

Existing law provides that a ceding insurer is allowed credit for reinsurance as either an asset or a deduction from liability under specified conditions if the reinsurance contract contains certain provisions:

This bill would declare the intent of the Legislature to promote consistent regulation of reinsurance throughout the country in accordance with the National Association of Insurance Commissioners' Credit for Reinsurance Model.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 922.2 of the Insurance Code is amended
2 to read:

3 922.2. (a) Credit for reinsurance shall be allowed a domestic
4 ceding insurer as either an asset or a deduction from liability in
5 accordance with Sections 922.4 and 922.5 only if the reinsurance
6 contract contains provisions that provide, in substance, as
7 follows:

8 (1) The reinsurer shall indemnify the ceding insurer for ~~any~~
9 ~~portion~~ of the risk it has assumed according to the terms and
10 conditions contained in the reinsurance contract.

11 (2) In the event of insolvency and the appointment of a
12 conservator, liquidator, or statutory successor of the ceding
13 company, the ~~portion of any risk or obligation assumed by the~~
14 ~~reinsurer~~ reinsurance shall be payable to the conservator,
15 liquidator, or statutory successor on the basis of claims allowed
16 against the insolvent company by any court of competent
17 jurisdiction or by any conservator, liquidator, or statutory
18 successor of the company having authority to allow such claims,
19 without diminution because of that insolvency, or because the
20 conservator, liquidator, or statutory successor has failed to pay all
21 or a portion of any claims. Payments by the reinsurer as set forth
22 in this subdivision shall be made directly to the ceding insurer or
23 to its conservator, liquidator, or statutory successor, except where
24 the contract of insurance or reinsurance specifically provides
25 another payee of such reinsurance in the event of the insolvency
26 of the ceding insurer.

1 The reinsurance contract may provide that the conservator,
2 liquidator, or statutory successor of a ceding insurer shall give
3 written notice of the pendency of a claim against the ceding
4 insurer indicating the policy or bond reinsured, within a
5 reasonable time after such claim is filed and the reinsurer may
6 interpose, at its own expense, in the proceeding where such claim
7 is to be adjudicated, any defense or defenses which it may deem
8 available to the ceding insurer or its conservator, liquidator, or
9 statutory successor. The expense thus incurred by the reinsurer
10 shall be payable subject to court approval out of the estate of the
11 insolvent ceding insurer as part of the expense of conservation or
12 liquidation to the extent of a proportionate share of the benefit
13 which may accrue to the ceding insurer in conservation or
14 liquidation, solely as a result of the defense undertaken by the
15 reinsurer.

16 (b) Payment pursuant to a reinsurance contract shall be made
17 within a reasonable time with reasonable provision for
18 verification in accordance with the terms of the reinsurance
19 agreement. However, in no event shall the payments be beyond
20 the period required by the National Association of Insurance
21 Commissioners (NAIC) Accounting Practices and Procedures
22 Manual.

23 (c) The original insured or policyholder shall not have any
24 rights against the reinsurer which are not specifically set forth in
25 the contract of reinsurance, or in a specific agreement between
26 the reinsurer and the original insured or policyholder.

27 *SEC. 2. Section 922.5 of the Insurance Code is amended to*
28 *read:*

29 922.5. (a) An asset or a deduction from liability for
30 reinsurance ceded by a domestic insurer to an assuming insurer
31 not meeting the requirements of Section 922.4 shall be allowed in
32 an amount not exceeding the liabilities carried by the ceding
33 insurer to the extent of either of the following:

34 (1) The asset or deduction is not greater than the amount of
35 funds held by the ceding insurer under a reinsurance contract
36 with that assuming insurer as security for the payment of
37 obligations thereunder and such funds are held in the United
38 States under the exclusive control of the ceding insurer.

39 (2) The asset or deduction is not greater than the amount of
40 funds held in a trust, satisfactory to the commissioner, on behalf

1 of the ceding insurer under a reinsurance contract with such
2 assuming insurer as security for the payment of obligations
3 thereunder and is held in a qualified United States financial
4 institution, as defined in subdivision (b) of Section 922.7, subject
5 to withdrawal solely by the ceding insurer.

6 The security under this subdivision may be in the form of cash
7 or securities authorized as general investments under Article 3
8 (commencing with Section 1170) of Chapter 2, or securities
9 listed by the Securities Valuation Office of the NAIC, qualifying
10 as admitted assets under this code and with liquidity meeting the
11 requirements of Section 706.5.

12 (b) An asset or a deduction from liability for reinsurance ceded
13 by a domestic insurer to an assuming insurer not meeting the
14 requirements of Section 922.4 shall be allowed in an amount not
15 exceeding the liabilities carried by the ceding insurer to the
16 extent that security is provided in the form of letters of credit,
17 satisfactory to the commissioner, which shall be:

18 (1) Clean, irrevocable, unconditional letters of credit, issued or
19 confirmed by—~~a qualified United States financial institution~~
20 *institutions*, as defined in subdivision (a) of Section 922.7,
21 effective no later than December 31st in respect of the year for
22 which filing is being made, and in the possession of the ceding
23 insurer on or before the filing date of its annual statement.

24 (2) Letters of credit meeting applicable standards of issuer
25 acceptability as of the dates of their issuance or confirmation and
26 shall, notwithstanding the issuing or confirming ~~institution's~~
27 *institutions'* subsequent failure to meet applicable standards of
28 issuer acceptability, continue to be acceptable as security until
29 their expiration, extension, renewal, modification, or amendment,
30 whichever first occurs.

31 *SEC. 3. Section 922.6 of the Insurance Code is amended to*
32 *read:*

33 922.6. (a) Unless credit for reinsurance or deduction from
34 liability is disallowed pursuant to Section 922.3 or 923, credit for
35 reinsurance or deduction from liability shall be allowed a foreign
36 ceding insurer to the extent credit has been allowed by the ceding
37 insurer's state of domicile if either:

38 (1) The state of domicile is accredited by the NAIC.

1 (2) Credit or deduction from liability would be allowed under
2 this statute if the foreign ceding insurer were domiciled in this
3 state.

4 (b) Notwithstanding subdivision (a), credit for reinsurance or
5 deduction from liability may be disallowed upon a finding by the
6 commissioner that either the *financial* condition of the reinsurer,
7 or the collateral or other security provided by the reinsurer, does
8 not, *in substance*, satisfy the credit for reinsurance requirements
9 applicable to ceding insurers domiciled in this state.

10 *SEC. 4. Section 1781.10 of the Insurance Code is amended to*
11 *read:*

12 1781.10. (a) A reinsurance intermediary shall be subject to
13 examination by the commissioner. The commissioner shall have
14 access to all books, bank accounts, and records of each
15 reinsurance intermediary in a form usable to the commissioner.

16 (b) A reinsurance intermediary-manager may be examined as
17 if it were the reinsurer.

18 (c) *All documents and information disclosed in connection*
19 *with the examination of a reinsurance intermediary may be used*
20 *by the commissioner and shall be given confidential treatment by*
21 *the commissioner to the same extent as provided in Section 735.5*
22 *for documents and information disclosed in connection with the*
23 *examination of an insurer.*

24 (d) *An examination shall be at the expense of the reinsurance*
25 *intermediary. The commissioner may revoke the license of the*
26 *reinsurance intermediary for a refusal to promptly pay the*
27 *examination expense when due.*

28 *SEC. 5. Section 1781.14 is added to the Insurance Code, to*
29 *read:*

30 1781.14. (a) *A reinsurance intermediary shall comply with*
31 *any order of a court of competent jurisdiction or a duly*
32 *constituted arbitration panel requiring the production of*
33 *nonprivileged documents by the reinsurance intermediary, or the*
34 *testimony of an employee or other individual otherwise under*
35 *control of the reinsurance intermediary with respect to any*
36 *reinsurance transaction for which it acted as a reinsurance*
37 *intermediary.*

38 (b) *Compliance with subdivision (a) shall be subject to the*
39 *right of the reinsurance intermediary and the parties to the*
40 *transaction to object to the court or arbitration panel concerning*

1 *the nature or scope of the documents or testimony or the time*
2 *within which it must comply with the order. Failure to comply*
3 *with the order shall be deemed to be a material noncompliance*
4 *with this chapter. However, in no event shall this section be*
5 *construed to require more than one appearance by the same*
6 *witness in a single action or arbitration.*

7 ~~SECTION 1. The Legislature declares its intent to promote~~
8 ~~consistent regulation of reinsurance throughout the country in~~
9 ~~accordance with the National Association of Insurance~~
10 ~~Commissioners' Credit for Reinsurance Model.~~

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