

# REINSURANCE

## State Legislative Update: Reinsurance and Captives

BY KAREN BENSON

**Reinsurance: Maryland HB 305.** In April 2010, Maryland's Governor signed into law legislation that (effective June 1, 2010) amends the State's domestic reinsurance law requirements by: (1) specifying an assessment fee payable by certain domestic reinsurers to the Maryland Insurance Commissioner; (2) exempting domestic reinsurers from a requirement to have an office in the State; (3) requiring domestic reinsurers to keep specified assets in the State; and (4) authorizing domestic reinsurers to keep their general ledger account records outside the State under specified circumstances. **Kansas HB 2500.** This amendment to the Kansas Municipal Group-Funded Pool Act allows municipal insurance pool applicants to submit a confirmation that reinsurance approved by the Insurance Commission is in effect or will be effective at the time the pool assumes risk. The legislation takes effect upon its publication in the Kansas Statute Book.

**Captive Insurers: Delaware HB 314.** This bill proposes to amend Delaware's captive insurance company laws by adding two new forms of captive insurance companies – "agency captive insurance companies" and "branch captive insurance companies" – to those that can currently be licensed in Delaware. In an "agency captive" structure, the insurance risk on policies is reinsured to the agency captive, thereby allowing the agents or brokers that placed the policies to share in the profits or losses attributable to these policies. "Branch captive" insurance companies are divisions of offshore captives that establish a business unit onshore. The legislation was passed by the Delaware House in March 2010 and by the Delaware Senate in April 2010, subject to an amendment introduced by the Senate, which requires the Insurance Commissioner to make a finding that a "branch captive" insurer is financially stable in order to exempt the insurer from the minimum capital and surplus requirements and reserve requirements of the State insurance law.

## N.Y. Clears Up Some Contract "Un-Certainty"

BY STEVEN KASS

In its 2008 Circular Letter No. 20, the New York Insurance Department addressed "contract certainty" – the requirement that parties to reinsurance contracts and P&C insurance policies reach final and complete agreement on all contract terms by contract inception, and then execute the contract itself at or "promptly" after inception. The Department has now issued Supplement No. 1 to the Circular Letter to provide further guidance on the issue.

Supplement No. 1 explains that "promptly" is generally interpreted to mean within 30 business days. It goes on to remind parties that "any principles and practices established to ensure contract certainty must comply with all existing statutory or regulatory provisions concerning the content, timing, or delivery of insurance policies." The Supplement also addresses compliance, stating that the Department will focus resources on policies where, because of the unique nature or size of the risk, issues regarding contract certainty are most apt to surface, including those issued to (1) large commercial insureds, written on a standard or manuscript basis, (2) policyholders in the special risk and excess lines markets, and (3) other insurers via reinsurance.

The Supplement explains that policy documentation for purposes of contract certainty should contain all agreed terms of the contract, and may include an insurance policy, binder, schedule of cover, signed contract wording, or a complete slip; for reinsurance, documentation can be evidenced by a binder, cover note, or similar document, provided it reflects all agreed terms and conditions. The Supplement also recognizes the global nature of the insurance industry, stating that contract certainty principles and standards established in the United Kingdom and Bermuda will guide the Department to the extent they are not inconsistent with New York law.

The Department also announced that in the latter half of 2010 it may issue letters of inquiry to licensees aimed at gathering information regarding practices implemented to assure that contract certainty is routinely achieved.



*Global standards ok if not inconsistent with NY law*