§ 1308. Reinsurance, when permitted; effect on reserves. (a) (1) Any authorized insurer, hereinafter called the "ceding insurer", may, subject to the limitations of this chapter, reinsure its risks and policy liabilities in any other assuming insurer with the effects herein prescribed. No prohibition or limitation in this chapter shall invalidate any reinsurance agreement as between the parties thereto.

(2) (A) No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance ceded, renewed, or otherwise becoming effective after January first, nineteen hundred forty, unless:

(i) the reinsurance shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer, and

(ii) under the reinsurance agreement the liability for such reinsurance is assumed by the assuming insurer as of the same effective date.

(B) Except as provided by subsection (a) of section four thousand one hundred eighteen of this chapter, no such credit shall be allowed any ceding insurer for reinsurance ceded, renewed, or otherwise becoming effective after September first, nineteen hundred fifty-two, unless the reinsurance agreement provides that payments by the assuming insurer shall be made directly to the ceding insurer or its liquidator, receiver or statutory successor, except where:

(i) the agreement specifies another payee of such reinsurance in the event of the insolvency of the ceding insurer, or

(ii) the assuming insurer with the consent of the direct insureds has assumed such policy obligations of the ceding insurer as its direct obligations to the payees under such policies, in substitution for the obligations of the ceding insurer to such payees.

(3) Such reinsurance agreement may provide that the liquidator, receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against such insurer on the contract reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated

any defenses which it deems available to the ceding company, its liquidator, receiver or statutory successor. Such expense shall be chargeable subject to court approval against the insolvent ceding insurer as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding company.

(b) In determining the ceding insurer's financial condition, if reinsurance is effected by the ceding insurer in any assuming insurer, the ceding insurer shall, in addition to any credit allowed against its loss reserves, and any reduction of reserves allowed pursuant to paragraph nine of subsection (a) of section one thousand three hundred one of this article for reinsurance recoverable from insurers not authorized in this state, receive credit for reinsurance effected with any assuming insurer authorized to do such business in this state, calculated as follows:

(1) as to reinsurance of all or any part of any risk not specified in paragraph two hereof, by way of deduction from its unearned premium liability calculated in accordance with the provisions of section one thousand three hundred five of this article; or

(2) as to reinsurance of all or any part of any life insurance or annuity or non-cancellable disability risk, by way of deduction from its reserve liability, in an amount not exceeding the reserve on the reinsured portion of such risk which the ceding insurer would have maintained if such portion had not been reinsured.

(c) Nothing in this section shall be deemed to permit the ceding insurer to receive through the cession of all or any part of any risk any advantage whereby its unearned premium reserve, or the net amount of its valuation reserves, is reduced below the amount required by this chapter.

(d) In determining its financial condition, any assuming insurer shall be charged:

(1) in its unearned premium liability with an amount equal to the

deduction specified in paragraph one of subsection (b) hereof, and

(2) in its valuation reserve liability with an amount at least equal to the amount which it would be required to maintain in accordance with the provisions of this chapter if it were the direct insurer of such assumed risks on the basis specified in the reinsurance agreement.

(e) (1) During any period of twelve consecutive months, without the superintendent's permission:

(A) no domestic insurer, except life, shall by any reinsurance agreement or agreements cede an amount of its insurance on which the total gross reinsurance premiums are more than fifty percent of the unearned premiums on the net amount of its insurance in force at the beginning of such period, and

(B) no alien insurer, except life, shall by any reinsurance agreement or agreements, involving the withdrawal or transfer of any interest in any of its trusteed assets in the United States, cede an amount of its insurance on which the total gross reinsurance premiums are more than fifty percent of the unearned premiums on the net amount of its insurance in force in the United States, at the beginning of such period.

(2) Paragraph one hereof shall not apply to reinsurance made in the ordinary course of business reinsuring specified individual risks under reinsurance agreements relating to current business.

(3) If any agreement or agreements at any time effect reinsurance of substantially all of the net insurance in force of such ceding insurer, no credit by way of deduction pursuant to subsection (b) hereof shall be allowed to such ceding insurer, unless either:

(A) the assuming insurer or insurers assume or have assumed the policy obligations of the ceding insurer as their direct obligations to the obligees under such policies and the provisions for cancellation, if any, of such reinsurance agreements have been approved by the superintendent, or

(B) such reinsurance agreement or agreements were made under pooling arrangements between insurers associated in a group for underwriting purposes and were approved by the superintendent as not impairing the protection of policyholders of such ceding or assuming insurers.

(f) (1) Unless the superintendent permits:

(A) No domestic life insurance company shall (i) reinsure its whole

risk on any individual life or joint lives, or (ii) reinsure a substantial portion of its life insurance in force.

(B) No foreign or alien insurer shall reinsure its whole risk on any individual life or joint lives, written under a policy or contract delivered or issued for delivery in this state.

(2) Any domestic life insurance company proposing to assume by reinsurance all or any part of the business in force, other than portions of individual risks, of any domestic, foreign or alien life insurance company, fraternal benefit society or other organization having outstanding policies or certificates of life insurance or accident and health insurance or annuity contracts shall make written application to the superintendent for permission to do so. If after due consideration the superintendent is satisfied that the proposed reinsurance will not prejudice the interests of the policyholders of either the applicant or the companies that are members of The Life Insurance Guaranty Corporation or of The Life and Health Insurance Company Guaranty Corporation of New York, the superintendent shall grant the permission.

(3) The superintendent, after notice to and an opportunity to be heard by all domestic life insurance companies, may issue and from time to time amend regulations establishing standards which tend to promote orderly growth and financial stability among the companies and otherwise effectuate the purposes of this subsection.

(g) Any domestic life insurance company which has discontinued doing any new business in a foreign country may, with the permission of the superintendent, reinsure all or any part of its risks outstanding in such country in any solvent insurer authorized to transact business therein. Thereafter such life insurance company shall not be required to charge as liabilities the reserves and other liabilities pertaining to the reinsured risks.