

1 HB32
2 203371-5
3 By Representatives Rich and Ellis
4 RFD: State Government
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1
2 ENROLLED, An Act,

3 Relating to insurance; to implement the reinsurance
4 collateral provisions of the covered agreements that were
5 entered into between the United States and the European Union
6 and the United Kingdom, and for those purposes to amend
7 Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19,
8 Code of Alabama 1975, and to add Sections 27-5B-8.1 and
9 27-5B-20 to the Code of Alabama 1975.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 27-5B-3, 27-5B-9, 27-5B-11,
12 27-5B-14, and 27-5B-19, Code of Alabama 1975, are amended to
13 read as follows:

14 "§27-5B-3.

15 "(a) Credit for reinsurance shall be allowed a
16 domestic ceding insurer as either an asset or a reduction from
17 liability on account of reinsurance ceded only when the
18 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,
19 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, or 27-5B-9.

20 "(b) The commissioner may adopt by rule specific
21 additional requirements relating to any of the following:

22 "(1) The valuation of assets or reserve credits.

23 "(2) The amount and forms of security supporting
24 reinsurance arrangements described in subsection (b) of
25 Section 27-5B-19.

1 "(3) The circumstances pursuant to which credit
2 shall be reduced or eliminated.

3 "(c) Credit shall be allowed under ~~Sections~~ Section
4 27-5B-4, 27-5B-5, or 27-B5-6 only as respects cessions of
5 those kinds or classes of business which the assuming insurer
6 is licensed or otherwise permitted to write or assume in its
7 state of domicile or, in the case of a U.S. branch of an alien
8 assuming insurer, in the state through which it is entered and
9 licensed to transact insurance or reinsurance. Credit shall be
10 allowed under Section 27-5B-6 or 27-5B-7 only if the
11 applicable requirements of Section 27-5B-10 have been
12 satisfied.

13 "§27-5B-9.

14 "Credit shall be allowed when the reinsurance is
15 ceded to an assuming insurer not meeting the requirements of
16 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, ~~or~~ 27-5B-8, or
17 27-5B-8.1, but only as to the insurance of risks located in
18 jurisdictions where the reinsurance is required by applicable
19 law or regulation of that jurisdiction.

20 "§27-5B-11.

21 "If the assuming insurer does not meet the
22 requirements of Section 27-5B-4, 27-5B-5, ~~or~~ 27-5B-6, or
23 27-5B-8.1, the credit permitted by Section 27-5B-7 or 27-5B-8
24 shall not be allowed unless the assuming insurer agrees in the
25 trust agreements to the following conditions:

1 "(1) Notwithstanding any other provisions in the
2 trust instrument, if the trust fund is inadequate because it
3 contains an amount less than the amount required by subsection
4 (c) of Section 27-5B-7, or if the grantor of the trust has
5 been declared insolvent or placed into receivership,
6 rehabilitation, liquidation, or similar proceedings under the
7 laws of its state or country of domicile, the trustee shall
8 comply with an order of the commissioner with regulatory
9 oversight over the trust or with an order of a court of
10 competent jurisdiction directing the trustee to transfer to
11 the commissioner with regulatory oversight all of the assets
12 of the trust fund.

13 "(2) The assets shall be distributed by and claims
14 shall be filed with and valued by the commissioner with
15 regulatory oversight in accordance with the laws of the state
16 in which the trust is domiciled that are applicable to the
17 liquidation of domestic insurance companies.

18 "(3) If the commissioner with regulatory oversight
19 determines that the assets of the trust fund or any part
20 thereof are not necessary to satisfy the claims of the U.S.
21 ceding insurers of the grantor of the trust, the assets or
22 part thereof shall be returned by the commissioner with
23 regulatory oversight to the trustee for distribution in
24 accordance with the trust agreement.

1 "(4) The grantor shall waive any right otherwise
2 available to it under U.S. law that is inconsistent with this
3 provision.

4 "§27-5B-14.

5 "(a) An asset or a reduction from liability for the
6 reinsurance ceded by a domestic insurer to an assuming insurer
7 not meeting the requirements of Section 27-5B-3, 27-5B-4,
8 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, 27-5B-9,
9 27-5B-10, 27-5B-11, 27-5B-12, or 27-5B-13 shall be allowed in
10 an amount not exceeding the liabilities carried by the ceding
11 insurer.

12 "(b) In addition to any other authority of the
13 commissioner, the commissioner, by rule adopted pursuant to
14 subsection (b) of Section 27-5B-19, may adopt specific
15 additional requirements relating to any of the following:

16 "(1) The valuation of assets or reserve credits.

17 "(2) The amount and forms of security supporting
18 reinsurance arrangements described in subsection (b) of
19 Section 27-5B-19.

20 "(3) The circumstances pursuant to which credit will
21 be reduced or eliminated.

22 "(c) The reduction shall be in the amount of funds
23 held by or on behalf of the ceding insurer, including funds
24 held in trust for the ceding insurer, under a reinsurance
25 contract with the assuming insurer as security for the payment

1 of obligations thereunder, if the security is held in the
2 United States subject to withdrawal solely by, and under the
3 exclusive control of, the ceding insurer; or, in the case of a
4 trust, held in a qualified U.S. financial institution, as
5 defined in subsection (b) of Section 27-5B-15. This security
6 may be in the form of any of the following:

7 "(1) Cash.

8 "(2) Securities listed by the Securities Valuation
9 Office of the National Association of Insurance Commissioners,
10 including those deemed exempt from filing as defined by the
11 Purposes and Procedures Manual of the Securities Valuation
12 Office, and qualifying as admitted assets.

13 "(3) Clean, irrevocable, unconditional letters of
14 credit, issued or confirmed by a qualified U.S. financial
15 institution, as defined in subsection (a) of Section 27-5B-15,
16 effective no later than December 31 of the year for which the
17 filing is being made, and in the possession of, or in trust
18 for, the ceding insurer on or before the filing date of its
19 annual statement.

20 "(4) Letters of credit meeting applicable standards
21 of issuer acceptability as of the dates of their issuance (or
22 confirmation) shall, notwithstanding the issuing (or
23 confirming) institution's subsequent failure to meet
24 applicable standards of issuer acceptability, continue to be

1 acceptable as security until their expiration, extension,
2 renewal, modification, or amendment, whichever first occurs.

3 "(5) Any other form of security acceptable to the
4 commissioner.

5 "§27-5B-19.

6 "(a) The commissioner may adopt rules implementing
7 the provisions of this chapter.

8 "(b) In addition to the authority of the
9 commissioner pursuant to subsection (a), the commissioner may
10 adopt rules applicable to reinsurance arrangements as provided
11 in this subsection.

12 "(1) A rule adopted pursuant to this subsection may
13 apply only to reinsurance relating to any of the following:

14 "a. Life insurance policies with guaranteed nonlevel
15 gross premiums or guaranteed nonlevel benefits.

16 "b. Universal life insurance policies with
17 provisions resulting in the ability of a policyholder to keep
18 a policy in force over a secondary guarantee period.

19 "c. Variable annuities with guaranteed death or
20 living benefits.

21 "d. Long-term care insurance policies.

22 "e. Any other life and health insurance and annuity
23 products that the NAIC adopts model regulatory requirements
24 with respect to credit for reinsurance.

1 "(2) A rule adopted pursuant to paragraph a. or b.
2 of subdivision (1) may apply to any ~~treaty~~ reinsurance
3 agreement containing (i) policies issued on or after January
4 1, 2015, or (ii) policies issued prior to January 1, 2015, if
5 risk pertaining to the pre-2015 policies is ceded in
6 connection with the ~~treaty~~ reinsurance agreement, in whole or
7 in part, on or after January 1, 2015, or ~~treaties~~ reinsurance
8 agreements meeting both items (i) and (ii).

9 "(3) A rule adopted pursuant to this subsection may
10 require the ceding insurer, in calculating the amounts or
11 forms of security required to be held under rules adopted
12 under this authority, to use the valuation manual adopted by
13 the NAIC as described in subdivision (1) of subsection (b) of
14 Section 27-36A-15, including all amendments adopted by the
15 NAIC and in effect on the date as of which the calculation is
16 made, to the extent applicable.

17 "(4) A rule adopted pursuant to this subsection
18 shall not apply to cessions to an assuming insurer that meets
19 any of the following:

20 "a. The conditions set forth in Section 27-5B-8.1.

21 "b. Is certified in this state.

22 "c. Maintains at least two hundred fifty million
23 dollars (\$250,000,000) in capital and surplus when determined
24 in accordance with the Accounting Practices and Procedures
25 Manual of the NAIC, including all amendments thereto adopted

1 by the NAIC, excluding the impact of any permitted or
2 prescribed practices, and is either of the following:

3 "1. Licensed in at least 26 states.

4 "2. Licensed in at least 10 states, and licensed or
5 accredited in a total of at least 35 states.

6 "(5) The authority to adopt rules pursuant to this
7 subsection does not limit the commissioner's general authority
8 to adopt rules pursuant to subsection (a)."

9 Section 2. Sections 27-5B-8.1 and 27-5B-20 are added
10 to the Code of Alabama 1975, to read as follows:

11 §27-5B-8.1. Reinsurer domiciled in a reciprocal
12 jurisdiction.

13 (a) Credit shall be allowed when the reinsurance is
14 ceded to an assuming insurer meeting each of the following
15 conditions:

16 (1) The assuming insurer shall have its head office
17 or be domiciled in, as applicable, and be licensed in a
18 reciprocal jurisdiction. A reciprocal jurisdiction is a
19 jurisdiction that meets one of the following:

20 a. A non-U.S. jurisdiction that is subject to an
21 in-force covered agreement with the United States, each within
22 its legal authority, or, in the case of a covered agreement
23 between the United States and European Union, is a member
24 state of the European Union. For purposes of this subsection,
25 a covered agreement is an agreement entered into pursuant to

1 the Dodd-Frank Wall Street Reform and Consumer Protection Act,
2 31 U.S.C. §§313 and 314, that is currently in effect or in a
3 period of provisional application and addresses the
4 elimination, under specified conditions, of collateral
5 requirements as a condition for entering into any reinsurance
6 agreement with a ceding insurer domiciled in this state or for
7 allowing the ceding insurer to recognize credit for
8 reinsurance.

9 b. A U.S. jurisdiction that meets the requirements
10 for accreditation under the NAIC financial standards and
11 accreditation program.

12 c. A qualified jurisdiction, as determined by the
13 commissioner pursuant to subsection (c) of Section 27-5B-8,
14 which is not otherwise described in paragraph a. or b. and
15 which meets certain additional requirements, consistent with
16 the terms and conditions of in-force covered agreements, as
17 specified by the commissioner by rule.

18 (2) The assuming insurer shall have and maintain, on
19 an ongoing basis, minimum capital and surplus, or its
20 equivalent, calculated according to the methodology of its
21 domiciliary jurisdiction, in an amount to be set forth in
22 regulation. If the assuming reinsurer is an association,
23 including incorporated and individual unincorporated
24 underwriters, it shall have and maintain on an ongoing basis,
25 minimum capital and surplus equivalents, net of liabilities,

1 calculated according to the methodology applicable in its
2 domiciliary jurisdiction, and a central fund containing a
3 balance in amounts to set forth by rule.

4 (3) The assuming insurer shall have and maintain, on
5 an ongoing basis, a minimum solvency or capital ratio, as
6 applicable, which shall be set forth by rule. If the assuming
7 insurer is an association, including incorporated and
8 individual unincorporated underwriters, it shall have and
9 maintain, on an ongoing basis, a minimum solvency or capital
10 ratio in the reciprocal jurisdiction where the assuming
11 insurer has its head office or is domiciled, as applicable,
12 and is also licensed.

13 (4) The assuming insurer shall agree and provide
14 adequate assurance to the commissioner, in a form specified by
15 the commissioner pursuant to rule, to all of the following:

16 a. The assuming insurer shall provide prompt written
17 notice and explanation to the commissioner if it falls below
18 the minimum requirements set forth in subdivisions (2) and
19 (3), or if any regulatory action is taken against it for
20 serious noncompliance with applicable law.

21 b. The assuming insurer shall consent in writing to
22 the jurisdiction of the courts of this state and to the
23 appointment of the commissioner as agent for service of
24 process. The commissioner may require that consent for service
25 of process be provided to the commissioner and included in

1 each reinsurance agreement. Nothing in this paragraph shall
2 limit, or in any way alter, the capacity of parties to a
3 reinsurance agreement to agree to alternative dispute
4 resolution mechanisms, except to the extent the agreements are
5 unenforceable under applicable insolvency or delinquency laws.

6 c. The assuming insurer shall consent in writing to
7 pay all final judgments, wherever enforcement is sought,
8 obtained by a ceding insurer or its legal successor, that have
9 been declared enforceable in the jurisdiction where the
10 judgment was obtained.

11 d. Each reinsurance agreement shall include a
12 provision requiring the assuming insurer to provide security
13 in an amount equal to 100 percent of the assuming insurer's
14 liabilities attributable to reinsurance ceded pursuant to that
15 agreement if the assuming insurer resists enforcement of a
16 final judgment that is enforceable under the law of the
17 jurisdiction in which it was obtained or a properly
18 enforceable arbitration award, whether obtained by the ceding
19 insurer or by its legal successor on behalf of its resolution
20 estate.

21 e. The assuming insurer shall confirm that it is not
22 presently participating in any solvent scheme of arrangement
23 which involves this state's ceding insurers, and agrees to
24 notify the ceding insurer and the commissioner and to provide
25 security in an amount equal to 100 percent of the assuming

1 insurer's liabilities to the ceding insurer should the
2 assuming insurer enter into such a solvent scheme of
3 arrangement. The security shall be in a form consistent with
4 Sections 27-5B-8 and 27-5B-14 and as specified by the
5 commissioner by rule.

6 (5) The assuming insurer or its legal successor
7 shall provide, if requested by the commissioner, on behalf of
8 itself and any legal predecessors, certain documentation to
9 the commissioner as specified by the commissioner by rule.

10 (6) The assuming insurer shall maintain a practice
11 of prompt payment of claims under reinsurance agreements
12 pursuant to criteria set forth by rule.

13 (7) The assuming insurer's supervisory authority
14 shall confirm to the commissioner on an annual basis, as of
15 the preceding December 31 or at the annual date otherwise
16 statutorily reported to the reciprocal jurisdiction, that the
17 assuming insurer complies with the requirements set forth in
18 subdivisions (2) and (3).

19 (8) Nothing in this subsection precludes an assuming
20 insurer from providing the commissioner with information on a
21 voluntary basis.

22 (b) (1) The commissioner shall timely create and
23 publish a list of reciprocal jurisdictions.

24 (2) A list of reciprocal jurisdictions is published
25 through the NAIC Committee Process. The commissioner's list

1 shall include any reciprocal jurisdiction, as defined in
2 paragraph a. or b. of subdivision (1) of subsection (a), and
3 shall consider any other reciprocal jurisdiction included on
4 the NAIC list. The commissioner may approve a jurisdiction
5 that does not appear on the NAIC list of reciprocal
6 jurisdictions in accordance with criteria to be developed
7 under rules adopted by the commissioner.

8 (3) The commissioner may remove a jurisdiction from
9 the list of reciprocal jurisdictions upon a determination that
10 the jurisdiction no longer meets the requirements of a
11 reciprocal jurisdiction in accordance with a process set forth
12 in rules adopted by the commissioner, except that the
13 commissioner shall not remove from the list a reciprocal
14 jurisdiction as defined in paragraph a. or b. of subdivision
15 (1) of subsection (a). Upon removal of a reciprocal
16 jurisdiction from this list, credit for reinsurance ceded to
17 an assuming insurer which has its home office or is domiciled
18 in that jurisdiction shall be allowed, if otherwise allowed
19 pursuant to this chapter.

20 (c) The commissioner shall timely create and publish
21 a list of assuming insurers that have satisfied the conditions
22 set forth in this section and to which cessions shall be
23 granted credit in accordance with this section. The
24 commissioner may add an assuming insurer to the list if an
25 NAIC accredited jurisdiction has added the assuming insurer to

1 a list of assuming insurers or if, upon initial eligibility,
2 the assuming insurer submits the information to the
3 commissioner as required under subdivision (4) of subsection
4 (a) and complies with any additional requirements that the
5 commissioner may impose by rule, except to the extent that
6 they conflict with an applicable covered agreement.

7 (d) If the commissioner determines that an assuming
8 insurer no longer meets one or more of the requirements under
9 this section, the commissioner may revoke or suspend the
10 eligibility of the assuming insurer for recognition under this
11 section in accordance with procedures set forth by rule.

12 (1) While an assuming insurer's eligibility is
13 suspended, no reinsurance agreement issued, amended, or
14 renewed after the effective date of the suspension qualifies
15 for credit except to the extent that the assuming insurer's
16 obligations under the contract are secured in accordance with
17 Section 27-5B-14.

18 (2) If an assuming insurer's eligibility is revoked,
19 no credit for reinsurance may be granted after the effective
20 date of the revocation with respect to any reinsurance
21 agreements entered into by the assuming insurer, including
22 reinsurance agreements entered into prior to the date of
23 revocation, except to the extent that the assuming insurer's
24 obligations under the contract are secured in a form

1 acceptable to the commissioner and consistent with Section 27-5B-14.

2 (e) If subject to a legal process of rehabilitation,
3 liquidation, or conservation, as applicable, the ceding
4 insurer, or its representative, may seek and, if determined
5 appropriate by the court in which the proceedings are pending,
6 may obtain an order requiring that the assuming insurer post
7 security for all outstanding ceded liabilities.

8 (f) Nothing in this section shall limit or in any
9 way alter the capacity of parties to a reinsurance agreement
10 to agree on requirements for security or other terms in that
11 reinsurance agreement, except as expressly prohibited by this
12 chapter or other applicable law or rule.

13 (g) (1) Credit may be taken under this section only
14 for reinsurance agreements entered into, amended, or renewed
15 on or after the effective date of the act adding this section,
16 and only with respect to losses incurred and reserves reported
17 on or after the later of a. the date on which the assuming
18 insurer has met all eligibility requirements pursuant to
19 subsection (a), and b. the effective date of the new
20 reinsurance agreement, amendment, or renewal.

21 (2) This subsection does not alter or impair a
22 ceding insurer's right to take credit for reinsurance, to the
23 extent that credit is not available under this section, as
24 long as the reinsurance qualified for credit under any other
25 applicable provision of this chapter.

1 (3) Nothing in this section shall authorize an
2 assuming insurer to withdraw or reduce the security provided
3 under any reinsurance agreement except as permitted by the
4 terms of the agreement.

5 (4) Nothing in this section shall limit or in any
6 way alter the capacity of parties to any reinsurance agreement
7 to renegotiate the agreement.

8 §27-5B-20. Reinsurance Agreements Affected.

9 The amendments of this chapter and the additions to
10 this chapter by the act adding this section shall apply to all
11 cessions after the effective date of the act adding this
12 section under reinsurance agreements that have an inception,
13 anniversary, or renewal date not less than six months after
14 the effective date of the act adding this section.

15 Section 3. This act shall be effective on the first
16 day of January following upon its passage and approval by the
17 Governor or its otherwise becoming law.

