

1 SB347  
2 136092-1  
3 By Senator Smitherman  
4 RFD: Banking and Insurance  
5 First Read: 14-MAR-13

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8 SYNOPSIS: To repeal portions of Title 27 of the Code  
9 of Alabama 1975.

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11 A BILL  
12 TO BE ENTITLED  
13 AN ACT

14  
15 Relating to the Alabama Insurance Code, to repeal  
16 the following:

17 27-5-12 (a) An insurer authorized under this title  
18 may accept reinsurance only of such risks and retain risk  
19 thereon within such limits as it is otherwise authorized to  
20 insure. (b) An insurer authorized under this title may  
21 reinsure all, or any part, of any particular risk with any  
22 solvent insurer. (c) Credit for reinsurance shall be allowed  
23 a domestic ceding insurer as either an asset or a reduction  
24 from liability on account of reinsurance ceded only when the  
25 reinsurer meets the requirements of subdivision (1), (2), (3),  
26 or (4). Credit shall be allowed under subdivision (2) or (3)  
27 only if the applicable requirements of subdivision (5) have

1       been satisfied. (1) Credit shall be allowed when the  
2       reinsurance is ceded to an assuming insurer that is licensed  
3       to transact insurance or reinsurance in this state. (2)a.  
4       Credit shall be allowed when the reinsurance is ceded to an  
5       assuming insurer that is domiciled in, or in the case of a  
6       U.S. branch of an alien assuming insurer is entered through, a  
7       state that employs standards regarding credit for reinsurance  
8       substantially similar to those applicable under this statute  
9       and the assuming insurer or U.S. branch of an alien assuming  
10      insurer does both of the following: 1. Maintains a surplus as  
11      regards policyholders in an amount not less than twenty  
12      million dollars (\$20,000,000). 2. Submits to the authority of  
13      this state to examine its books and records. b. The  
14      requirement of subparagraph 1. of paragraph a. does not apply  
15      to reinsurance ceded and assumed pursuant to pooling  
16      arrangements among insurers in the same holding company  
17      system. (3)a. Credit shall be allowed when the reinsurance is  
18      ceded to an assuming insurer which maintains a trust fund in a  
19      qualified United States financial institution, as defined in  
20      subdivision (2) of subsection (e), for the payment of the  
21      valid claims of its United States ceding insurers, their  
22      assigns and successors in interest. To enable the commissioner  
23      to determine the sufficiency of the trust fund, the assuming  
24      insurer shall report annually to the commissioner information  
25      substantially the same as that required to be reported on the  
26      NAIC annual statement form by licensed insurers. The assuming  
27      insurer shall submit to examination of its books and records

1 by the commissioner and bear the expense of examination. b.  
2 1. Credit for reinsurance shall not be granted under this  
3 subdivision unless the form of the trust and any amendments to  
4 the trust have been approved by one of the following: (i)  
5 The commissioner of insurance of the state where the trust is  
6 domiciled. (ii) The commissioner of insurance of another  
7 state who, pursuant to the terms of the trust instrument, has  
8 accepted principal regulatory oversight of the trust. 2. The  
9 form of the trust and any trust amendments also shall be filed  
10 with the commissioner of insurance of every state in which the  
11 ceding insurer beneficiaries of the trust are domiciled. The  
12 trust instrument shall provide that contested claims shall be  
13 valid and enforceable upon the final order of any court of  
14 competent jurisdiction in the United States. The trust shall  
15 vest legal title to its assets in its trustees for the benefit  
16 of the assuming insurer's United States ceding insurers, their  
17 assigns, and successors in interest. The trust and the  
18 assuming insurer shall be subject to examination as determined  
19 by the commissioner. 3. The trust shall remain in effect for  
20 as long as the assuming insurer has outstanding obligations  
21 due under the reinsurance agreements subject to the trust. No  
22 later than February 28 of each year the trustees of the trust  
23 shall report to the commissioner in writing the balance of the  
24 trust and listing the trust's investments at the preceding  
25 year-end and shall certify the date of termination of the  
26 trust, if so planned, or certify that the trust will not  
27 expire prior to the following December 31. c. The following

1 requirements apply to the following categories of assuming  
2 insurer: 1. The trust fund for a single assuming insurer  
3 shall consist of funds in trust in an amount not less than the  
4 assuming insurer's liabilities attributable to reinsurance  
5 ceded by United States ceding insurers, and, in addition, the  
6 assuming insurer shall maintain a trusteed surplus of not less  
7 than twenty million dollars (\$20,000,000). 2. (i) In the case  
8 of a group including incorporated and individual  
9 unincorporated underwriters: A. For reinsurance ceded under  
10 reinsurance agreements with an inception, amendment, or  
11 renewal date on or after August 1, 1995, the trust shall  
12 consist of a trusteed account in an amount not less than the  
13 group's several liabilities attributable to business ceded by  
14 United States domiciled ceding insurers to any member of the  
15 group. B. For reinsurance ceded under reinsurance agreements  
16 with an inception date on or before July 31, 1995, and not  
17 amended or renewed after that date, notwithstanding the other  
18 provisions of this section, the trust shall consist of a  
19 trustee account in an amount not less than the group's several  
20 insurance and reinsurance liabilities attributable to business  
21 written in the United States. C. In addition to these trusts,  
22 the group shall maintain in trust a trusteed surplus of which  
23 one hundred million dollars (\$100,000,000) shall be held  
24 jointly for the benefit of the United States domiciled ceding  
25 insurers of any member of the group for all years of account.  
26 (ii) The incorporated members of the group shall not be  
27 engaged in any business other than underwriting as a member of

1 the group and shall be subject to the same level of regulation  
2 and solvency control by the group's domiciliary regulator as  
3 are the unincorporated members. (iii) Within 90 days after  
4 its financial statements are due to be filed with the group's  
5 domiciliary regulator, the group shall provide to the  
6 commissioner an annual certification by the group's  
7 domiciliary regulator of the solvency of each underwriter  
8 member; or if a certification is unavailable, financial  
9 statements, prepared by independent public accountants, of  
10 each underwriter member of the group. (4) Credit shall be  
11 allowed when the reinsurance is ceded to an assuming insurer  
12 not meeting the requirements of subdivision (1), (2), or (3),  
13 but only as to the insurance of risks located in jurisdictions  
14 where the reinsurance is required by applicable law or  
15 regulation of that jurisdiction. (5)a. If the assuming  
16 insurer is not licensed to transact insurance or reinsurance  
17 in this state, the credit permitted by subdivisions (2) and  
18 (3) shall not be allowed unless the assuming insurer agrees in  
19 the reinsurance agreements to both of the following: 1. That  
20 in the event of the failure of the assuming insurer to perform  
21 its obligations under the terms of the reinsurance agreement,  
22 the assuming insurer, at the request of the ceding insurer,  
23 shall submit to the jurisdiction of any court of competent  
24 jurisdiction in any state of the United States, will comply  
25 with all requirements necessary to give the court  
26 jurisdiction, and will abide by the final decision of the  
27 court or of any appellate court in the event of an appeal.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 27-5-12, Code of Alabama 1975, is  
3 repealed.

4 Section 2. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.