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HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS

BILL #: HB 2105

RELATING TO: Reinsurance

SPONSOR(S): Representative Bradley

COMPANION BILL(S): CS/S 2522

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL RULES AND REGULATIONS
(2) INSURANCE
(3) HEALTH CARE SERVICES
(4)
(5)

I. SUMMARY:

HB 2105 substantially revises s. 624.610, F.S., (1998 Supplement), relating to the types of reinsurance approved and reinsurers “accredited” to facilitate the acquisition of credit as an asset or a deduction from liability on an insurer’s accounting and financial statements. These changes strengthen the nexus between Florida statutes and the current National Association of Insurance Commissioners Model Act on Credit for Reinsurance.

The changes create uniform trust fund language for the three classes of trusts authorized and make consistent the regulatory authority with regard to these trusts. The changes also generally reinforce state action to compel security from alien reinsurers and to enforce state requirements that the claims against insolvent alien insurers be valued and paid in accordance with state law.

The bill streamlines the approval process for reinsurers by incorporating the concept of “accredited reinsurers” into Florida law, it standardizes trust fund language, updates risk transfer requirements, restricts the ceding reinsurance requirement to domestic insurers, provides rulemaking authority, and makes technical changes to the law.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida-authorized insurance companies buying reinsurance are allowed to receive credit on their financial statements only if the reinsurance is a type that is approved or acceptable pursuant to s. 624.610, F.S., (1998 Supplement). For example, an insurer is limited by state law as to the amount of premiums it may write as a percentage of its surplus ("premium to surplus ratio"). By buying reinsurance and *ceding* premiums to an approved reinsurer, the insurance company may obtain credit on its financial statements and deduct the ceded premiums from its net premium to surplus limitations. The insurer buying the reinsurance is referred to as the *ceding insurer* and the reinsurer is referred to as the *assuming insurer.*

Section 624.610, F.S., (1998 Supplement), which relates to reinsurance credit, has been amended to reflect certain provisions of the National Association of Insurance Commissioners (NAIC) Model Law on Credit for Reinsurance. However, the piecemeal approach to amending the law has resulted in inconsistent terminology and incorrect cross-references and does not incorporate all of the substantive provisions of the model law.

Currently, section 624.610 (3)(a), F.S., (1998 Supplement), lists four types of "approved reinsurers" which include:

1) an insurer authorized in Florida to transact such line of insurance or reinsurance;

2) an insurer approved by the Department of Insurance that meets the same criteria for solvency established for authorized insurers;

3) an underwriting member of an insurance exchange domiciled in the U.S. that was licensed and in operation on or before January 1, 1993, provided that the exchange meets the financial requirements for an authorized insurer; or

4) the Lloyd's of London provision that refers to a group of individual, unincorporated, or incorporated alien insurers which maintains funds of at least $50 million held in trust for U.S. policyholders in a bank or trust company subject to supervision by any state or the U.S. or that is a member of the Federal Reserve System and which annually files evidence with the department that it can meet its obligations under its reinsurance agreements. [1]

In addition to the types of "approved" reinsurers listed above, section 624.610(3)(b), F.S., (1998 Supplement), allows insurers to take credit in their financial statements for reinsurance ceded to a "nonapproved reinsurer" if it satisfies any of the following categories:

1) A reinsurer that maintains the standards and meets the financial requirements applicable to an authorized insurer;

2) A reinsurer that deposits funds for a specific reinsurance agreement with a market value equal to the credit taken, pursuant to express provision in the reinsurance contract, as security for the payment of the obligations under the agreement, if such funds are subject to withdrawal by, and under the control of, the ceding insurer or such deposits are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer.[2]

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[1] The statute applies additional requirements for the trust agreements that are referred to in section 624.610 (3)(a)4. and (3)(b)2. If the trust fund is less than the amount required by the department or if the grantor of the trust has been declared insolvent, the reinsurer must agree to comply with orders of the commissioner with regulatory oversight or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner all of the assets of U.S. trust beneficiaries. Other related requirements apply.

[2] The statute applies additional requirements for the trust agreements that are referred to in sections 624.610 (3)(a)4. and (3)(b)2. If the trust fund is less than the amount required by the department or if the grantor of the trust has been declared insolvent, the reinsurer must agree to comply with orders of the commissioner with regulatory oversight or with an order of a court of competent

3) A clean, unconditional, evergreen, and irrevocable letter of credit issued for at least a one-year term that equals or exceeds the liability of the reinsurer for a specific reinsurance agreement for the unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses. The letter must be issued by a banking institution which is a member of the Federal Reserve System and which has financial standing satisfactory to the department. The department may adopt rules requiring that the letter adhere to the format approved by the NAIC; or

4) When the reinsurance is ceded to a reinsurer that maintains a trust fund in a bank or trust company that is subject to supervision by any state or that is a member of the Federal Reserve System, for the payment of the valid claims for its U.S. business. The trust must have an amount not less than the reinsurer's liabilities for its U.S. business and, in addition, a surplus of not less than $20 million. The trust must be in a form approved by the insurance commissioner where the trust is domiciled or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight. The reinsurer must report quarterly to the insurance commissioner information required to be reported on the NAIC Annual Statement form, and the trust and reinsurer must be subject to examination by the commissioner.

Section 624.610(1), F.S., (1998 Supplement), sets out the purpose of this section, which includes legislative intent and a requirement that upon the insolvency of a non-U.S. insurer or reinsurer which provides security to fund its U.S. obligations, the security must be maintained in the U.S. and claims must be filed with and valued by the State Insurance Commissioner with regulatory oversight, and the assets distributed in accordance with the insurance laws of the state in which the trust is domiciled. The Legislature declares that these matters are fundamental to the business of insurance. Such findings and requirements are intended to assert jurisdiction over such an insolvency to the maximum legal extent to prevent a federal bankruptcy court or foreign country from having jurisdiction and control over the assets.

Section 624.610(5), F.S., (1998 Supplement), provides a broad grant of authority to the department to "disallow any credit which it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer."

Section 624.610(7), F.S., (1998 Supplement), specifies that for credit to be allowed, the reinsurance must be payable without diminution because of insolvency of the ceding insurer, except when the reinsurance contract specifically provides payment to the named insured, assignee, or named beneficiary or the reinsurer (assuming insurer) has directly assumed the policy obligations of the ceding insurer.

Section 624.610(10), F.S., (1998 Supplement), requires authorized Florida insurers to file with the department a copy of a summary statement regarding each reinsurance "treaty" (contract) within 30 days of receipt of a cover note or similar confirmation of coverage, but in no event later than 6 months after the effective date of the reinsurance treaty. The statute specifies the information that must be included in the summary statement and provides exceptions from this requirement.

Section 624.610(11), F.S., (1998 Supplement), the department may disallow any credit if a ceding direct insurer increases its surplus as a result of payment of consideration to an assuming reinsurer for underwriting any loss obligation already incurred in excess of the consideration paid; or where the consideration paid is derived from present value or discounting concepts based upon anticipated investment income.

Section 624.610(12), F.S., (1998 Supplement), provides that if the department finds that a reinsurance agreement creates a substantial risk of insolvency to either insurer, the department may by order require a cancellation of the reinsurance agreement.

Section 624.610(13), F.S., (1998 Supplement), no credit is allowed for reinsurance that does not create a meaningful transfer of risk of loss to the reinsurer, pursuant to department rules that must substantially conform with the 1991 NAIC Practices and Procedures Manual(s).

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jurisdiction directing the trustee to transfer to the commissioner all of the assets of U.S. trust beneficiaries. Other related requirements apply.

B. EFFECT OF PROPOSED CHANGES:

Summary of Proposed Changes:

1. Reinforces Florida's actions to compel security from alien reinsurers and enforce Florida's requirements that the claims against insolvent aliens be valued and paid in accordance with Florida's law.

2. Conforms Florida's statutes governing Lloyd of London's reinsurance trust funds to the actual operation of the New York trusts as restructured by agreement between the New York Insurance Department and Lloyd of London in 1995.

3. Creates uniform trust fund language for the three classes of trust authorized in the model and make consistent the regulatory authority with regard to these three classes of trusts.

4. Provides more incentives for reinsurers to provide more reinsurance capital to the state by streamlining the approval process for reinsurers and incorporating the concept of "accredited insurers" into law. To be accredited, a reinsurer must:
   - ❖ Submit to the state's jurisdiction.
   - ❖ Submit to the state's ability to conduct a financial examination.
   - ❖ File a certified copy of its license to transact insurance or reinsurance in at least one state.
   - ❖ Annually file its Annual Statement in its state of domicile.
   - ❖ Maintain a surplus of not less than $20 million.
   - ❖ Have not had its accreditation request denied within 90 days of its submission.

Proposed Changes to Section 624.610, F.S., (1998 Supplement) in Detail:

The bill substantially rewrites s. 624.610, F.S., (1998 Supplement), relating to the types of reinsurance that are approved and reinsurers "accredited" in order for an insurer to obtain credit as an asset or a deduction from liability on its accounting and financial statements. These changes bring the Florida statute into closer conformity with the NAIC Model Act on Credit for Reinsurance.

HB 2105, in Section 1, subsection (1), retains the current law's purpose and intent provisions relating to the insolvency of a non-U.S. insurer or reinsurer which provides security to fund its U.S. obligations and that assets be distributed in accordance with the insurance laws of the state in which the trust is domiciled.

The bill provides that credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability only when the reinsurer meets the following requirements:

(a) An insurer that is authorized to transact insurance or reinsurance in Florida.

(b) An insurer that is "accredited" as a reinsurer in Florida. Such an insurer must submit to the state's jurisdiction; submit to the state's authority to examine books and records; is licensed or authorized to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, is entered through or licensed to transact insurance in at least one state; files copies of its annual and quarterly statements filed with the insurance department of its state of domicile and its most recent audited financial statement; and maintains a surplus of not less than $20 million.

To be an accredited insurer as provided in paragraph (b), above, the insurer must have its accreditation approved by the department, or not denied by the commissioner within 90 days of its submission for approval. The provisions of s. 120.60, F.S., relating to the general license application procedures that apply to state agencies, would not apply to the accreditation applications or procedures. The department may deny or revoke an assuming insurer's accreditation if the insurer does not submit the required documentation (specified above), fails to meet all of the required standards, or if the accreditation would be hazardous to the policyholders of the state. Various factors are listed that the department may consider.

The costs incurred by the department to review a reinsurer's request for accreditation must be charged to the requesting reinsurer.

(c) An insurer that maintains a trust fund in a qualified U.S. financial institution, as defined, for the payment of the valid claims of its U.S. ceding insurers. The insurer must report annually to the department information substantially the same as that required to be reported on the National Association of Insurance Commissioners (NAIC) Annual Statement form by authorized insurers, and the insurer must submit to examination of its records and bear the expense of examination. The form of the trust must be approved by the commissioner of the state where the trust is domiciled or of another state who, pursuant to the trust agreement, has accepted principal regulatory oversight of the trust. The form of the trust and any amendments must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled, must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the U.S., and must vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers. Each year the trustee must report to the commissioner in writing the balance of the trust.

The amount of funds required for the trust of an insurer specified in paragraph (c), above, depend upon the type of assuming insurer, as follows:

1) The trust fund for a single assuming insurer must consist of an amount not less that the insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers and, in addition, a trusteed surplus of not less than $20 million.

2) The trust fund for a group including incorporated and individual unincorporated underwriters must consist of an amount not less than the groups' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group; however, for reinsurance agreements with an inception date on or before July 31, 1995, this amount must be not less than the group's several insurance and reinsurance liabilities attributable to business written in the U.S.; in both cases (before or after July 31, 1995) the group must additionally maintain in trust a surplus of $100 million held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account. The changes essentially conform the law governing Lloyd's of London reinsurance trust funds to the actual operation of the New York trusts as restructured by agreement between the New York Insurance Department and Lloyds in 1995.

The credit permitted by paragraph (c), above, is not permitted unless the reinsurance agreement provides that assuming insurer agrees to submit to the jurisdiction of any court of competent jurisdiction if the insurer fails to perform its obligations under the terms of the agreement, and to designate the commissioner or a designated attorney to be served any lawful process on behalf of the ceding company. The assuming insurer must also agree to the following conditions: 1) if the trust fund is inadequate or if the grantor of the trust has been declared insolvent, the trustee must comply with an order of the commissioner with regulatory oversight or with an order of a U.S. court of competent jurisdiction directing the trustee to transfer to such commissioner all of the assets of the trust fund, to be distributed in accordance with the laws of the state in which the trust is domiciled; 2) if the commissioner with regulatory oversight determines that the assets of the trust are not necessary to satisfy the claims of the U.S. ceding insurer, the assets must be returned by the commissioner to the trustee for distribution in accordance with the trust agreement; and 3) the grantor must waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

For paragraphs (a) and (b), the credit must be allowed only for those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

Credit must be allowed when the reinsurance is ceded to an assuming insurer *not* meeting the requirements of paragraphs (a), (b), or (c), above but only as to the insurance of risks located in

jurisdictions where the reinsurance is required to be purchased by a particular entity by applicable law. For example, Florida law itself has such a requirement, by requiring residential property insurers to purchase coverage (essentially, reinsurance) from the Florida Hurricane Catastrophe Fund.

An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer *not* meeting the requirements of subsections (2) and (3) (which are all of the types of approved reinsurance and accredited reinsurers discussed above and found on page 3 of HB 2105), *is allowed* in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the U.S. subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified U.S. financial institution, as defined. This security may be in the form of cash; securities qualifying as admitted assets under the Insurance Code; clean, irrevocable, unconditional letters of credit issued by a qualified U.S. financial institution; or any other form of security acceptable to the department.

Two different definitions are provided for a “qualified U.S. financial institution” for two different purposes. The first definition applies for purposes of paragraph (4)(c) regarding issuing a letter of credit and describes an institution as an entity that is organized, or in the case of a U.S. office of a foreign banking organization, is licensed under the laws of the U.S. or any state; is regulated, supervised, and examined by U.S. or state authorities having regulatory authority over banks and trust companies; and has been determined by either the department or the Securities Valuation Office of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the department.

The other definition of qualified U.S. financial institution applies to the provisions which specify institutions that are eligible to act as a fiduciary of a trust. The definition is substantially the same as the first definition relating to licensure and regulatory supervision, but it does not include the requirement that the institution be determined by either the department or the Securities Valuation Office of the NAIC to meet certain standards of financial condition and standing.

The bill retains the current law provision that includes health maintenance organizations within the definition of ceding insurer.

The bill authorizes the department to disallow any credit that it finds would be contrary to the proper interest of the policyholders or stockholders, but unlike the current law, this would be limited to ceding *domestic* insurers.

The bill contains similar provisions to the current law that for credit to be allowed, the reinsurance must be payable without diminution because of insolvency of the ceding insurer, subject to certain exceptions.

The current law’s requirements for authorized Florida insurers to file with the department a copy of a summary statement regarding each reinsurance “treaty” is limited by the bill to domestic insurers and commercially domiciled insurers. A “commercially domiciled insurer” is defined in s. 624.075, F.S., as a foreign or alien insurer that has written an average of 25 percent or more direct premiums in this state than it has written in its state of domicile during the preceding 3 years and the direct premiums written constitute more than 55 percent of its total direct premiums written in the U.S.

The bill provides that cessions of directly written risk or loss or any ceding insurer otherwise subject to this section with less than $500,000 in direct premiums written in this state during the preceding calendar year or with less than 1,000 policyholders at the end of the preceeding calendar year are exempt from filing with the department one copy of a summary statement. The Insurance Commissioner may waive such requirement.

The bill retains the current law that authorizes the department to order cancellation of a reinsurance agreement if the department finds that the agreement creates a substantial risk of insolvency to either insurer. It also retains the current law that no credit is allowed for reinsurance that does not create a meaningful transfer of risk of loss to the reinsurer.

The bill authorizes the department to adopt rules implementing the provisions of section 624.610, F.S., (1998 Supplement).

Provides an effective date upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The department is authorized to adopt rules and regulations to implement the provisions of this bill. See “comments” section.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends section 624.610, F.S., (1998 Supplement).

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 624.610, F.S., (1998 Supplement), relating to the types of reinsurance that are approved and reinsurers "accredited" in order for an insurer to obtain credit as an asset or a deduction from liability on its accounting and financial statements.

Subsection (1) retains the current law's purpose and intent provisions relating to the insolvency of a non-U.S. insurer or reinsurer which provides security to fund its U.S. obligations and provides that assets be distributed in accordance with the insurance laws of the state in which the trust is domiciled.

Subsection (2) provides that credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability only when the reinsurer meets the following requirements found in **Subsection (3)**:

(a) An insurer that is authorized to transact insurance or reinsurance in Florida.

(b) An insurer that is "accredited" as a reinsurer in Florida. Such an insurer must submit to the state's jurisdiction; submit to the state's authority to examine books and records; is licensed or authorized to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, is entered through or licensed to transact insurance in at least one state; files copies of its annual and quarterly statements filed with the insurance department of its state of domicile and its most recent audited financial statement; and maintains a surplus of not less than $20 million.

To be an accredited insurer as provided in paragraph (b), above, the insurer must have its accreditation approved by the department, or not denied by the commissioner within 90 days of its submission for approval. Specifies that the provisions of s. 120.60, F.S., relating to the general license application procedures that apply to state agencies, do not apply to the accreditation applications or procedures. Provides that the department may deny or revoke an assuming insurer's accreditation if the insurer does not submit the required documentation, fails to meet all of the required standards, or if the accreditation is hazardous to the policyholders of the state. Provides various factors that the department may consider. Provides that the costs incurred by the department to review a reinsurer's request for accreditation must be charged to the requesting reinsurer.

(c) An insurer that maintains a trust fund in a qualified U.S. financial institution, as defined, for the payment of the valid claims of its U.S. ceding insurers. The insurer must report annually to the department information substantially the same as that required to be reported on the

National Association of Insurance Commissioners (NAIC) Annual Statement form by authorized insurers, and the insurer must submit to examination of its records and bear the expense of examination. The form of the trust must be approved by the commissioner of the state where the trust is domiciled or of another state who, pursuant to the trust agreement, has accepted principal regulatory oversight of the trust. The form of the trust and any amendments must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled, must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the U.S., and must vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers. Each year the trustee must report to the commissioner in writing the balance of the trust.

The amount of funds required for the trust of an insurer specified in paragraph (c), above, depend upon the type of assuming insurer, as follows:

1) The trust fund for a single assuming insurer must consist of an amount not less that the insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers and, in addition, a trusteed surplus of not less than $20 million.

2) The trust fund for a group including incorporated and individual unincorporated underwriters must consist of an amount not less than the groups' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group; however, for reinsurance agreements with an inception date on or before July 31, 1995, this amount must be not less than the group's several insurance and reinsurance liabilities attributable to business written in the U.S.; in both cases (before or after July 31, 1995) the group must additionally maintain in trust a surplus of $100 million held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account. The changes essentially conform the law governing Lloyd's of London reinsurance trust funds to the actual operation of the New York trusts as restructured by agreement between the New York Insurance Department and Lloyds in 1995.

The credit permitted by paragraph (c), above, is not permitted unless the reinsurance agreement provides that assuming insurer agrees to submit to the jurisdiction of any court of competent jurisdiction if the insurer fails to perform its obligations under the terms of the agreement, and to designate the commissioner or a designated attorney to be served any lawful process on behalf of the ceding company. The assuming insurer must also agree to the following conditions: 1) if the trust fund is inadequate or if the grantor of the trust has been declared insolvent, the trustee must comply with an order of the commissioner with regulatory oversight or with an order of a U.S. court of competent jurisdiction directing the trustee to transfer to such commissioner all of the assets of the trust fund, to be distributed in accordance with the laws of the state in which the trust is domiciled; 2) if the commissioner with regulatory oversight determines that the assets of the trust are not necessary to satisfy the claims of the U.S. ceding insurer, the assets must be returned by the commissioner to the trustee for distribution in accordance with the trust agreement; and 3) the grantor must waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

For paragraphs (a) and (b), the credit must be allowed only for those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

Credit must be allowed when the reinsurance is ceded to an assuming insurer *not* meeting the requirements of paragraphs (a), (b), or (c), above but only as to the insurance of risks located in jurisdictions where the reinsurance is required to be purchased by a particular entity by applicable law. For example, Florida law itself has such a requirement, by requiring residential property insurers to purchase coverage (essentially, reinsurance) from the Florida Hurricane Catastrophe Fund.

An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer *not* meeting the requirements of subsections (2) and (3) (which are all of the types of approved reinsurance and accredited reinsurers discussed above and found on page 3 of HB 2105), *is allowed* in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the U.S. subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified U.S. financial institution, as defined. This security may be in the form of cash; securities qualifying as admitted assets under the Insurance Code; clean, irrevocable, unconditional letters of credit issued by a qualified U.S. financial institution; or any other form of security acceptable to the department.

Subsection (4) provides that an asset allowed or a deduction from liability taken for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Subsections (2) and (3) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. Provides for conditions for the deductions and identifies specific types of securities acceptable for payment of obligations.

Subsection (5) provides two different definitions are provided for a “qualified U.S. financial institution” for two different purposes. The first definition applies for purposes of paragraph (4)(c) regarding issuing a letter of credit and describes an institution as an entitiy that is organized, or in the case of a U.S. office of a foreign banking organization, is licensed under the laws of the U.S. or any state; is regulated, supervised, and examined by U.S. or state authorities having regulatory authority over banks and trust companies; and has been determined by either the department or the Securities Valuation Office of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the department.

The other definition of qualified U.S. financial institution applies to the provisions which specify institutions that are eligible to act as a fiduciary of a trust. The definition is substantially the same as the first definition relating to licensure and regulatory supervision, but it does not include the requirement that the institution be determined by either the department or the Securities Valuation Office of the NAIC to meet certain standards of financial condition and standing.

Subsection (6) retains the current law provision that includes health maintenance organizations within the definition of ceding insurer.

Subsection (7) authorizes the department to disallow any credit that it finds would be contrary to the proper interest of the policyholders or stockholders, but unlike the current law, this would be limited to ceding *domestic* insurers.

Subsection (8) provides for credit to be allowed, if the reinsurance is payable without diminution because of insolvency of the ceding insurer, subject to certain exceptions.

Subsection (9) limits rights against the reinsurer.

Subsection (10) prohibits the authorized insurer from assuming any risk covering subject of insurance in Florida and which is written directly by any insurer not then authorized to transact such insurance in Florida, other than to surplus lines insurance lawfully written under part VIII of chapter 626, F.S.

Subsection (11) requires that domestic insurers and commercially domiciled insurers file with the department a copy of a summary statement regarding each reinsurance “treaty.” A “commercially domiciled insurer” is defined in s. 624.075, F.S., as a foreign or alien insurer that has written an average of 25 percent or more direct premiums in this state than it has written in its state of domicile during the preceding 3 years and the direct premiums written constitute more than 55 percent of its total direct premiums written in the U.S.

The bill provides that cessions of directly written risk or loss or any ceding insurer otherwise subject to this section with less than $500,000 in direct premiums written in this state during the preceeding calendar year or with less than 1,000 policyholders at the end of the preceeding calendar year are exempt from filing with the department one copy of a summary statment. The Insurance Commissioner and department may waive such requirement.

Subsection (12) authorizes the department to order cancellation of a reinsurance agreement if the department finds that the agreement creates a substantial risk of insolvency to either insurer. It also retains the current law that no credit is allowed for reinsurance that does not create a meaningful transfer of risk of loss to the reinsurer.

Subsection (13) provides that no credit shall be allowed for reinsurance with regard to which the reinsurance agreement does not create a meaningful transfer of risk of loss to the reinsurer.

Subsection (14) authorizes the department to adopt rules implementing the provisions of section 624.610, F.S., (1998 Supplement).

Subsection (15) clarifies that this section applies to all cessions after January 1, 2000.

Subsection 2. Provides an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   Insurers and reinsurers should benefit by conforming Florida's credit for reinsurance laws more closely to the NAIC Model Act and to the laws of most other states. The types of reinsurance transactions that would be permitted would be less likely to be subject to unique requirements in the state and would, therefore, reduce costs to insurers to ensure credit on their financial statements.

   Insurers and their policyholders should benefit by provisions that strengthen the state's authority to compel security from alien reinsurers and to enforce state requirements that the claims against insolvent alien insurers be valued and paid in accordance with state law.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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