

1 A bill to be entitled
2 An act relating to credit for reinsurance; amending s.
3 624.610, F.S.; transferring specified powers and
4 duties of the Commissioner of Insurance Regulation to
5 the Office of Insurance Regulation; requiring credits
6 for reinsurance to be allowed to ceding insurers under
7 certain circumstances; providing requirements for
8 assuming insurers in order for such credits to be
9 allowed; providing the definitions of the terms
10 "reciprocal jurisdiction" and "covered agreement";
11 requiring assuming insurers to have and maintain on an
12 ongoing basis minimum capital and surplus, or its
13 equivalent, and, if applicable, minimum capital and
14 surplus equivalents and a central fund; requiring
15 assuming insurers to have and maintain on an ongoing
16 basis a minimum solvency or capital ratio; providing
17 additional requirements for assuming insurers;
18 requiring assuming insurers to provide security in a
19 specified amount; specifying circumstances under which
20 credits may be taken; authorizing ceding insurers and
21 their representatives to seek orders requiring
22 assuming insurers to post security for certain
23 liabilities; authorizing the office to revoke and
24 suspend the eligibility of assuming insurers under a
25 specified circumstance; prohibiting credits under

26 | certain circumstances; providing exceptions; deleting
27 | obsolete language; providing construction; providing
28 | an effective date.

30 | Be It Enacted by the Legislature of the State of Florida:

31 |
32 | Section 1. Subsections (4) through (14) of section
33 | 624.610, Florida Statutes, are renumbered as subsection (5)
34 | through (15), respectively, subsection (2), paragraphs (c) and
35 | (e) of subsection (3), present subsections (4) and (5),
36 | paragraph (b) of present subsection (11), present subsection
37 | (15), and subsection (16) of that section are amended, and a new
38 | subsection (4) is added to that section, to read:

39 | 624.610 Reinsurance.—

40 | (2) Credit for reinsurance must be allowed a ceding
41 | insurer as either an asset or a deduction from liability on
42 | account of reinsurance ceded only when the reinsurer meets the
43 | requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph
44 | (3) (c), or subsection (4). Credit must be allowed under
45 | paragraph (3) (a) or paragraph (3) (b) only for cessions of those
46 | kinds or lines of business that the assuming insurer is
47 | licensed, authorized, or otherwise permitted to write or assume
48 | in its state of domicile or, in the case of a United States
49 | branch of an alien assuming insurer, in the state through which
50 | it is entered and licensed or authorized to transact insurance

51 or reinsurance.

52 (3)

53 (c)1. Credit must be allowed when the reinsurance is ceded
54 to an assuming insurer that maintains a trust fund in a
55 qualified United States financial institution, as defined in
56 paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of
57 its United States ceding insurers and their assigns and
58 successors in interest. To enable the office to determine the
59 sufficiency of the trust fund, the assuming insurer shall report
60 annually to the office information substantially the same as
61 that required to be reported on the NAIC Annual Statement form
62 by authorized insurers. The assuming insurer shall submit to
63 examination of its books and records by the office and bear the
64 expense of examination.

65 2.a. Credit for reinsurance must not be granted under this
66 subsection unless the form of the trust and any amendments to
67 the trust have been approved by:

68 (I) The insurance regulator of the state in which the
69 trust is domiciled; or

70 (II) The insurance regulator of another state who,
71 pursuant to the terms of the trust instrument, has accepted
72 principal regulatory oversight of the trust.

73 b. The form of the trust and any trust amendments must be
74 filed with the insurance regulator of every state in which the
75 ceding insurer beneficiaries of the trust are domiciled. The

76 | trust instrument must provide that contested claims are valid
77 | and enforceable upon the final order of any court of competent
78 | jurisdiction in the United States. The trust must vest legal
79 | title to its assets in its trustees for the benefit of the
80 | assuming insurer's United States ceding insurers and their
81 | assigns and successors in interest. The trust and the assuming
82 | insurer are subject to examination as determined by the
83 | insurance regulator.

84 | c. The trust remains in effect for as long as the assuming
85 | insurer has outstanding obligations due under the reinsurance
86 | agreements subject to the trust. No later than February 28 of
87 | each year, the trustee of the trust shall report to the
88 | insurance regulator in writing the balance of the trust and list
89 | the trust's investments at the preceding year end, and shall
90 | certify that the trust will not expire before ~~prior to~~ the
91 | following December 31.

92 | 3. The following requirements apply to the following
93 | categories of assuming insurer:

94 | a. The trust fund for a single assuming insurer consists
95 | of funds in trust in an amount not less than the assuming
96 | insurer's liabilities attributable to reinsurance ceded by
97 | United States ceding insurers, and, in addition, the assuming
98 | insurer shall maintain a trusteed surplus of not less than \$20
99 | million. Not less than 50 percent of the funds in the trust
100 | covering the assuming insurer's liabilities attributable to

101 reinsurance ceded by United States ceding insurers and trustee's
102 surplus shall consist of assets of a quality substantially
103 similar to that required in part II of chapter 625. Clean,
104 irrevocable, unconditional, and evergreen letters of credit,
105 issued or confirmed by a qualified United States financial
106 institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no
107 later than December 31 of the year for which the filing is made
108 and in the possession of the trust on or before the filing date
109 of its annual statement, may be used to fund the remainder of
110 the trust and trustee's surplus.

111 b. (I) In the case of a group including incorporated and
112 individual unincorporated underwriters:

113 (A) For reinsurance ceded under reinsurance agreements
114 with an inception, amendment, or renewal date on or after August
115 1, 1995, the trust consists of a trustee's account in an amount
116 not less than the group's several liabilities attributable to
117 business ceded by United States domiciled ceding insurers to any
118 member of the group;

119 (B) For reinsurance ceded under reinsurance agreements
120 with an inception date on or before July 31, 1995, and not
121 amended or renewed after that date, notwithstanding the other
122 provisions of this section, the trust consists of a trustee's
123 account in an amount not less than the group's several insurance
124 and reinsurance liabilities attributable to business written in
125 the United States; and

126 (C) In addition to these trusts, the group shall maintain
127 in trust a trusteed surplus of which \$100 million must be held
128 jointly for the benefit of the United States domiciled ceding
129 insurers of any member of the group for all years of account.

130 (II) The incorporated members of the group must not be
131 engaged in any business other than underwriting of a member of
132 the group, and are subject to the same level of regulation and
133 solvency control by the group's domiciliary regulator as the
134 unincorporated members.

135 (III) Within 90 days after its financial statements are
136 due to be filed with the group's domiciliary regulator, the
137 group shall provide to the insurance regulator an annual
138 certification by the group's domiciliary regulator of the
139 solvency of each underwriter member or, if a certification is
140 unavailable, financial statements, prepared by independent
141 public accountants, of each underwriter member of the group.

142 (e) If the reinsurance is ceded to an assuming insurer not
143 meeting the requirements of paragraph (a), paragraph (b),
144 paragraph (c), or paragraph (d), the office commissioner ~~commissioner~~ may
145 allow credit, but only if the assuming insurer holds surplus in
146 excess of \$250 million and has a secure financial strength
147 rating from at least two statistical rating organizations deemed
148 acceptable by the office commissioner ~~commissioner~~ as having experience and
149 expertise in rating insurers doing business in Florida,
150 including, but not limited to, Standard & Poor's, Moody's

151 Investors Service, Fitch Ratings, A.M. Best Company, and
152 Demotech. In determining whether credit should be allowed, the
153 office commissioner shall consider the following:

154 1. The domiciliary regulatory jurisdiction of the assuming
155 insurer.

156 2. The structure and authority of the domiciliary
157 regulator with regard to solvency regulation requirements and
158 the financial surveillance of the reinsurer.

159 3. The substance of financial and operating standards for
160 reinsurers in the domiciliary jurisdiction.

161 4. The form and substance of financial reports required to
162 be filed by the reinsurers in the domiciliary jurisdiction or
163 other public financial statements filed in accordance with
164 generally accepted accounting principles.

165 5. The domiciliary regulator's willingness to cooperate
166 with United States regulators in general and the office in
167 particular.

168 6. The history of performance by reinsurers in the
169 domiciliary jurisdiction.

170 7. Any documented evidence of substantial problems with
171 the enforcement of valid United States judgments in the
172 domiciliary jurisdiction.

173 8. Any other matters deemed relevant by the office
174 ~~commissioner~~. The office commissioner shall give appropriate
175 consideration to insurer group ratings that may have been

176 issued. The ~~office commissioner~~ may, in lieu of granting full
177 credit under this subsection, reduce the amount required to be
178 held in trust under paragraph (c).

179 (4) Credit must be allowed when the reinsurance is ceded
180 to an assuming insurer that meets the requirements of this
181 subsection.

182 (a) The assuming insurer must have its principal office or
183 its domicile, and must be licensed, in a reciprocal
184 jurisdiction. As used in this subsection, the term "reciprocal
185 jurisdiction" means a jurisdiction that meets one of the
186 following requirements:

187 1. A non-U.S. jurisdiction that is subject to an in-force
188 covered agreement with the United States, each within its legal
189 authority, or, in the case of a covered agreement between the
190 United States and the European Union, is a member state of the
191 European Union. As used in this paragraph, the term "covered
192 agreement" is an agreement that is:

193 a. Entered into pursuant to the Dodd-Frank Wall Street
194 Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314 in
195 effect on May 24, 2018.

196 b. Currently in effect or in a period of provisional
197 application and addresses the elimination, under specified
198 conditions, of collateral requirements as a condition for
199 entering into a reinsurance agreement with a ceding insurer
200 domiciled in this state or for allowing the ceding insurer to

201 recognize credit for reinsurance.

202 2. A U.S. jurisdiction that meets the requirements for
203 accreditation under the NAIC Financial Regulation Standards and
204 Accreditation Program.

205 3. A qualified jurisdiction, as determined by the office,
206 that:

207 a. Is not a jurisdiction in subparagraph 1. or
208 subparagraph 2.

209 b. Meets additional requirements specified by the
210 commission that are consistent with the terms and conditions of
211 an in-force covered agreement.

212 (b) The assuming insurer must have and maintain on an
213 ongoing basis minimum capital and surplus, or its equivalent,
214 calculated according to the methodology of its domiciliary
215 jurisdiction, in an amount specified by commission rule. If the
216 assuming insurer is an association, including incorporated and
217 individual unincorporated underwriters, it must have and
218 maintain on an ongoing basis minimum capital and surplus
219 equivalents (net of liabilities), calculated according to the
220 methodology applicable in its domiciliary jurisdiction, and a
221 central fund containing a balance in amounts specified by
222 commission rule.

223 (c) The assuming insurer must have and maintain on an
224 ongoing basis a minimum solvency or capital ratio, as
225 applicable, specified by the commission. If the assuming insurer

226 is an association, including incorporated and individual
227 unincorporated underwriters, it must have and maintain on an
228 ongoing basis a minimum solvency or capital ratio in the
229 jurisdiction where the assuming insurer has its head office or
230 its domicile, as applicable, and is also licensed.

231 (d) The assuming insurer must agree and provide adequate
232 assurance to the office, in a form specified by the commission,
233 that the assuming insurer:

234 1. Provides prompt written notice and explanation to the
235 office if the assuming insurer falls below the minimum
236 requirements specified in paragraph (b) or paragraph (c) or if
237 any regulatory action is taken against it for serious
238 noncompliance with applicable law.

239 2. Consents in writing to:

240 a. Submit to the jurisdiction of the courts of this state.

241 b. Designate the Chief Financial Officer under s. 48.151
242 as the agent for service of process, or designate an attorney as
243 its true and lawful attorney, upon whom a lawful process in an
244 action, suit, or proceeding instituted by or on behalf of the
245 ceding insurer may be served.

246 c. Pay all final judgments, wherever enforcement is
247 sought, that have been obtained by a ceding insurer or its legal
248 successor and that have been declared enforceable in the
249 jurisdiction where the judgment was obtained.

250

251 Sub-subparagraphs a. and b. do not limit or in any way alter the
252 capacity of parties to a reinsurance agreement to agree to
253 alternative dispute resolution mechanisms, except that such
254 agreements are unenforceable under applicable insolvency or
255 delinquency laws.

256 d. Each reinsurance agreement includes a provision
257 requiring the assuming insurer to provide security in an amount
258 equal to 100 percent of the assuming insurer's liabilities
259 attributable to reinsurance ceded pursuant to that agreement if
260 the assuming insurer resists enforcement of a final judgment
261 that is enforceable under the law of the jurisdiction in which
262 it was obtained or a properly enforceable arbitration award,
263 whether obtained by the ceding insurer or its legal successor on
264 behalf of its resolution estate.

265 e. The assuming insurer confirms that it is not presently
266 participating in any solvent scheme of arrangement that involves
267 this state's ceding insurers, and agrees to notify the ceding
268 insurer and the office and to provide security in an amount
269 equal to 100 percent of the assuming insurer's liabilities to
270 the ceding insurer should the assuming insurer enter into such a
271 solvent scheme of arrangement. Such security must be consistent
272 with this subsection and subsection (3).

273 (e) If requested by the office, the assuming insurer or
274 its legal successor must provide to the office, on behalf of
275 itself and any legal predecessors, any documentation pursuant to

276 criteria specified by the commission.

277 (f) The assuming insurer must maintain a practice of
278 prompt payment of claims under reinsurance agreements pursuant
279 to criteria specified by the commission.

280 (g) The assuming insurer's supervisory authority must
281 confirm to the office on an annual basis, on a form adopted by
282 the commission, that, as of the preceding December 31 or the
283 annual date otherwise statutorily reported to the reciprocal
284 jurisdiction, the assuming insurer complied with the
285 requirements specified in paragraphs (b) and (c).

286 (h)1. Credit may be taken under this subsection only for
287 reinsurance agreements entered into, amended, or renewed on or
288 after the date on which the assuming insurer has satisfied the
289 requirements to assume reinsurance under this subsection, and
290 only with respect to losses incurred and reserves reported on or
291 after the later of the date on which the assuming insurer has
292 met all eligibility requirements under this subsection, and the
293 effective date of the new reinsurance agreement, amendment, or
294 renewal.

295 2. This paragraph does not alter or impair a ceding
296 insurer's right to take credit for reinsurance, to the extent
297 that credit is not available under this subsection, as long as
298 the reinsurance qualifies for credit under any other applicable
299 provision of this section.

300 (i) If subject to a legal process of rehabilitation,

301 liquidation, or conservation, as applicable, the ceding insurer
302 or its legal successor may seek and, if determined appropriate
303 by the court in which the proceedings are pending, may obtain an
304 order requiring that the assuming insurer post security for all
305 outstanding ceded liabilities.

306 (j) If the office determines that an assuming insurer no
307 longer meets one or more of the requirements under this
308 subsection, the office may revoke or suspend the eligibility of
309 the assuming insurer for recognition under this subsection.

310 1. While an assuming insurer's eligibility is suspended,
311 any reinsurance agreement issued, amended, or renewed after the
312 effective date of the suspension does not qualify for credit,
313 except to the extent that the assuming insurer's obligations
314 under the contract are secured in accordance with this
315 subsection.

316 2. If an assuming insurer's eligibility is revoked, credit
317 for reinsurance may not be granted after the effective date of
318 the revocation with respect to any reinsurance agreement entered
319 into by the assuming insurer, including a reinsurance agreement
320 entered into before the date of revocation, except to the extent
321 that the assuming insurer's obligations under the contract are
322 secured in a form acceptable to the office and consistent with
323 this subsection.

324 (k) This subsection does not:

325 1. Preclude an assuming insurer from providing the office

326 | with information on a voluntary basis.

327 | 2. Limit or in any way alter the capacity of parties to a
 328 | reinsurance agreement to:

329 | a. Agree on requirements for security or other terms in
 330 | that reinsurance agreement, except as expressly prohibited by
 331 | this section or other applicable law or rule of the commission.

332 | b. Renegotiate the reinsurance agreement.

333 | 3. Authorize an assuming insurer to withdraw or reduce the
 334 | security provided under any reinsurance agreement, except as
 335 | permitted by the terms of the agreement.

336 | ~~(5)-(4)~~ An asset allowed or a deduction from liability
 337 | taken for the reinsurance ceded by an insurer to an assuming
 338 | insurer not meeting the requirements of subsections (2), ~~and~~
 339 | ~~(3), and (4)~~ is allowed in an amount not exceeding the
 340 | liabilities carried by the ceding insurer. The deduction must be
 341 | in the amount of funds held by or on behalf of the ceding
 342 | insurer, including funds held in trust for the ceding insurer,
 343 | under a reinsurance contract with the assuming insurer as
 344 | security for the payment of obligations thereunder, if the
 345 | security is held in the United States subject to withdrawal
 346 | solely by, and under the exclusive control of, the ceding
 347 | insurer, or, in the case of a trust, held in a qualified United
 348 | States financial institution, as defined in paragraph (6) (b)
 349 | ~~(5) (b)~~. This security may be in the form of:

350 | (a) Cash in United States dollars;

351 (b) Securities listed by the Securities Valuation Office
352 of the National Association of Insurance Commissioners and
353 qualifying as admitted assets pursuant to part II of chapter
354 625;

355 (c) Clean, irrevocable, unconditional letters of credit,
356 issued or confirmed by a qualified United States financial
357 institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no
358 later than December 31 of the year for which the filing is made,
359 and in the possession of, or in trust for, the ceding company on
360 or before the filing date of its annual statement; or

361 (d) Any other form of security acceptable to the office.

362 (6) (a) ~~(5) (a)~~ For purposes of paragraph (5) (c) ~~(4) (e)~~
363 regarding letters of credit, a "qualified United States
364 financial institution" means an institution that:

365 1. Is organized or, in the case of a United States office
366 of a foreign banking organization, is licensed under the laws of
367 the United States or any state thereof;

368 2. Is regulated, supervised, and examined by United States
369 or state authorities having regulatory authority over banks and
370 trust companies; and

371 3. Has been determined by either the office or the
372 Securities Valuation Office of the National Association of
373 Insurance Commissioners to meet such standards of financial
374 condition and standing as are considered necessary and
375 appropriate to regulate the quality of financial institutions

376 | whose letters of credit will be acceptable to the office.

377 | (b) For purposes of those provisions of this law which
378 | specify institutions that are eligible to act as a fiduciary of
379 | a trust, a "qualified United States financial institution" means
380 | an institution that is a member of the Federal Reserve System or
381 | that has been determined by the office to meet the following
382 | criteria:

383 | 1. Is organized or, in the case of a United States branch
384 | or agency office of a foreign banking organization, is licensed
385 | under the laws of the United States or any state thereof and has
386 | been granted authority to operate with fiduciary powers; and

387 | 2. Is regulated, supervised, and examined by federal or
388 | state authorities having regulatory authority over banks and
389 | trust companies.

390 | (12) ~~(11)~~

391 | (b) The summary statement must be signed and attested to
392 | by either the chief executive officer or the chief financial
393 | officer of the reporting insurer. In addition to the summary
394 | statement, the office may require the filing of any supporting
395 | information relating to the ceding of such risks as it deems
396 | necessary. If the summary statement prepared by the ceding
397 | insurer discloses that the net effect of a reinsurance treaty or
398 | treaties (or series of treaties with one or more affiliated
399 | reinsurers entered into for the purpose of avoiding the
400 | following threshold amount) at any time results in an increase

401 of more than 25 percent to the insurer's surplus as to
402 policyholders, then the insurer shall certify in writing to the
403 office that the relevant reinsurance treaty or treaties comply
404 with the accounting requirements contained in any rule adopted
405 by the commission under subsection (15) ~~(14)~~. If such
406 certificate is filed after the summary statement of such
407 reinsurance treaty or treaties, the insurer shall refile the
408 summary statement with the certificate. In any event, the
409 certificate must state that a copy of the certificate was sent
410 to the reinsurer under the reinsurance treaty.

411 ~~(15) Any reinsurer approved pursuant to s.~~
412 ~~624.610(3)(a)2., as such provision existed prior to July 1,~~
413 ~~2000, which fails to obtain accreditation pursuant to this~~
414 ~~section prior to December 30, 2003, shall have its approval~~
415 ~~terminated by operation of law on that date.~~

416 (16) This section applies ~~act shall apply~~ to all cessions
417 on or after January 1, 2021 ~~2001~~, under reinsurance agreements
418 that have an inception, anniversary, or renewal date on or after
419 January 1, 2021 ~~2001~~.

420 Section 2. This act shall take effect January 1, 2021.