

By Senator Broxson

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1 A bill to be entitled
2 An act relating to credit for reinsurance; amending s.
3 624.610, F.S.; adding conditions under which a ceding
4 insurer must be allowed credit for reinsurance;
5 defining the terms "reciprocal jurisdiction" and
6 "covered agreement"; specifying requirements for
7 assuming insurers and reinsurance agreements;
8 requiring the Financial Services Commission to adopt
9 certain rules; authorizing a ceding insurer or its
10 representative that is subject to rehabilitation,
11 liquidation, or conservation to seek a certain court
12 order; specifying a limitation on credit taken by a
13 ceding insurer; authorizing the Office of Insurance
14 Regulation to revoke or suspend an assuming insurer's
15 eligibility under certain conditions; providing
16 construction; deleting an obsolete provision;
17 conforming provisions to changes made by the act;
18 making technical changes; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Present subsections (4) through (14) of section
23 624.610, Florida Statutes, are redesignated as subsections (5)
24 through (15), respectively, a new subsection (4) is added to
25 that section, and subsection (2), paragraphs (c) and (e) of
26 subsection (3), present subsections (4) and (15), paragraph (a)
27 of present subsection (5), and paragraph (b) of present
28 subsection (11) are amended, to read:

29 624.610 Reinsurance.—

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30 (2) Credit for reinsurance must be allowed a ceding insurer
31 as either an asset or a deduction from liability on account of
32 reinsurance ceded only when the reinsurer meets the requirements
33 of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph (3) (c), or
34 subsection (4). Credit must be allowed under paragraph (3) (a) or
35 paragraph (3) (b) only for cessions of those kinds or lines of
36 business that the assuming insurer is licensed, authorized, or
37 otherwise permitted to write or assume in its state of domicile
38 or, in the case of a United States branch of an alien assuming
39 insurer, in the state through which it is entered and licensed
40 or authorized to transact insurance or reinsurance.

41 (3)

42 (c)1. Credit must be allowed when the reinsurance is ceded
43 to an assuming insurer that maintains a trust fund in a
44 qualified United States financial institution, as defined in
45 paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of
46 its United States ceding insurers and their assigns and
47 successors in interest. To enable the office to determine the
48 sufficiency of the trust fund, the assuming insurer shall report
49 annually to the office information substantially the same as
50 that required to be reported on the NAIC Annual Statement form
51 by authorized insurers. The assuming insurer shall submit to
52 examination of its books and records by the office and bear the
53 expense of examination.

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

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

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59 (II) The insurance regulator of another state who, pursuant
60 to the terms of the trust instrument, has accepted principal
61 regulatory oversight of the trust.

62 b. The form of the trust and any trust amendments must be
63 filed with the insurance regulator of every state in which the
64 ceding insurer beneficiaries of the trust are domiciled. The
65 trust instrument must provide that contested claims are valid
66 and enforceable upon the final order of any court of competent
67 jurisdiction in the United States. The trust must vest legal
68 title to its assets in its trustees for the benefit of the
69 assuming insurer's United States ceding insurers and their
70 assigns and successors in interest. The trust and the assuming
71 insurer are subject to examination as determined by the
72 insurance regulator.

73 c. The trust remains in effect for as long as the assuming
74 insurer has outstanding obligations due under the reinsurance
75 agreements subject to the trust. No later than February 28 of
76 each year, the trustee of the trust shall report to the
77 insurance regulator in writing the balance of the trust and list
78 the trust's investments at the preceding year end, and shall
79 certify that the trust will not expire prior to the following
80 December 31.

81 3. The following requirements apply to the following
82 categories of assuming insurer:

83 a. The trust fund for a single assuming insurer consists of
84 funds in trust in an amount not less than the assuming insurer's
85 liabilities attributable to reinsurance ceded by United States
86 ceding insurers, and, in addition, the assuming insurer shall
87 maintain a trusteed surplus of not less than \$20 million. Not

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88 less than 50 percent of the funds in the trust covering the
89 assuming insurer's liabilities attributable to reinsurance ceded
90 by United States ceding insurers and trusteed surplus shall
91 consist of assets of a quality substantially similar to that
92 required in part II of chapter 625. Clean, irrevocable,
93 unconditional, and evergreen letters of credit, issued or
94 confirmed by a qualified United States financial institution, as
95 defined in paragraph (6) (a) ~~(5) (a)~~, effective no later than
96 December 31 of the year for which the filing is made and in the
97 possession of the trust on or before the filing date of its
98 annual statement, may be used to fund the remainder of the trust
99 and trusteed surplus.

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

102 (A) For reinsurance ceded under reinsurance agreements with
103 an inception, amendment, or renewal date on or after August 1,
104 1995, the trust consists of a trusteed account in an amount not
105 less than the group's several liabilities attributable to
106 business ceded by United States domiciled ceding insurers to any
107 member of the group;

108 (B) For reinsurance ceded under reinsurance agreements with
109 an inception date on or before July 31, 1995, and not amended or
110 renewed after that date, notwithstanding the other provisions of
111 this section, the trust consists of a trusteed account in an
112 amount not less than the group's several insurance and
113 reinsurance liabilities attributable to business written in the
114 United States; and

115 (C) In addition to these trusts, the group shall maintain
116 in trust a trusteed surplus of which \$100 million must be held

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117 jointly for the benefit of the United States domiciled ceding
118 insurers of any member of the group for all years of account.

119 (II) The incorporated members of the group must not be
120 engaged in any business other than underwriting of a member of
121 the group, and are subject to the same level of regulation and
122 solvency control by the group's domiciliary regulator as the
123 unincorporated members.

124 (III) Within 90 days after its financial statements are due
125 to be filed with the group's domiciliary regulator, the group
126 shall provide to the insurance regulator an annual certification
127 by the group's domiciliary regulator of the solvency of each
128 underwriter member or, if a certification is unavailable,
129 financial statements, prepared by independent public
130 accountants, of each underwriter member of the group.

131 (e) If the reinsurance is ceded to an assuming insurer not
132 meeting the requirements of paragraph (a), paragraph (b),
133 paragraph (c), or paragraph (d), the office commissioner may
134 allow credit, but only if the assuming insurer holds surplus in
135 excess of \$250 million and has a secure financial strength
136 rating from at least two statistical rating organizations deemed
137 acceptable by the office commissioner as having experience and
138 expertise in rating insurers doing business in Florida,
139 including, but not limited to, Standard & Poor's, Moody's
140 Investors Service, Fitch Ratings, A.M. Best Company, and
141 Demotech. In determining whether credit should be allowed, the
142 office commissioner shall consider the following:

143 1. The domiciliary regulatory jurisdiction of the assuming
144 insurer.

145 2. The structure and authority of the domiciliary regulator

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146 with regard to solvency regulation requirements and the
147 financial surveillance of the reinsurer.

148 3. The substance of financial and operating standards for
149 reinsurers in the domiciliary jurisdiction.

150 4. The form and substance of financial reports required to
151 be filed by the reinsurers in the domiciliary jurisdiction or
152 other public financial statements filed in accordance with
153 generally accepted accounting principles.

154 5. The domiciliary regulator's willingness to cooperate
155 with United States regulators in general and the office in
156 particular.

157 6. The history of performance by reinsurers in the
158 domiciliary jurisdiction.

159 7. Any documented evidence of substantial problems with the
160 enforcement of valid United States judgments in the domiciliary
161 jurisdiction.

162 8. Any other matters deemed relevant by the office
163 ~~commissioner~~. The office ~~commissioner~~ shall give appropriate
164 consideration to insurer group ratings that may have been
165 issued. The office ~~commissioner~~ may, in lieu of granting full
166 credit under this subsection, reduce the amount required to be
167 held in trust under paragraph (c).

168 (4) Credit must be allowed when the reinsurance is ceded to
169 an assuming insurer meeting the requirements of this subsection.

170 (a) The assuming insurer must be licensed in, and have its
171 head office in or be domiciled in, as applicable, a reciprocal
172 jurisdiction. As used in this subsection, the term "reciprocal
173 jurisdiction" means a jurisdiction that is any of the following:

174 1. A non-United States jurisdiction that is subject to an

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175 in-force covered agreement with the United States, each within
176 its legal authority; or, in the case of a covered agreement
177 between the United States and the European Union, a jurisdiction
178 that is a member state of the European Union. As used in this
179 paragraph, the term "covered agreement" means an agreement
180 entered into pursuant to the Dodd-Frank Wall Street Reform and
181 Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is
182 currently in effect or in a period of provisional application
183 and which addresses the elimination, under specified conditions,
184 of collateral requirements as a condition for entering into any
185 reinsurance agreement with a ceding insurer domiciled in this
186 state or for allowing the ceding insurer to recognize credit for
187 reinsurance.

188 2. A United States jurisdiction that meets the requirements
189 for accreditation under the Financial Regulation Standards and
190 Accreditation Program of the National Association of Insurance
191 Commissioners.

192 3. A qualified jurisdiction, as determined by the office,
193 which is not otherwise described in subparagraph 1. or
194 subparagraph 2. and which meets certain additional requirements,
195 consistent with the terms and conditions of in-force covered
196 agreements, as specified by commission rule.

197 (b) The assuming insurer must have and maintain on an
198 ongoing basis minimum capital and surplus, or its equivalent,
199 calculated according to the methodology of its domiciliary
200 jurisdiction, in an amount specified by commission rule. If the
201 assuming insurer is an association, including incorporated and
202 individual unincorporated underwriters, it must have and
203 maintain on an ongoing basis minimum capital and surplus

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204 equivalents (net of liabilities) calculated according to the
205 methodology applicable in its domiciliary jurisdiction, and a
206 central fund containing a balance in amounts specified by
207 commission rule.

208 (c) The assuming insurer must have and maintain on an
209 ongoing basis a minimum solvency or capital ratio, as
210 applicable, as specified by commission rule. If the assuming
211 insurer is an association, including incorporated and individual
212 unincorporated underwriters, it must have and maintain on an
213 ongoing basis a minimum solvency or capital ratio in the
214 reciprocal jurisdiction where the assuming insurer is licensed
215 and has its head office or where it is domiciled, as applicable.

216 (d) The assuming insurer must agree and provide adequate
217 assurance to the office, in a form specified by the commission,
218 of all of the following:

219 1. Prompt written notice and explanation to the office if
220 the assuming insurer falls below the minimum requirements set
221 forth in paragraph (b) or paragraph (c), or if any regulatory
222 action is taken against it for serious noncompliance with
223 applicable law.

224 2. The assuming insurer's written consent to the
225 jurisdiction of the courts of this state and designation of the
226 Chief Financial Officer, pursuant to s. 48.151, or of a
227 designated attorney as its true and lawful attorney upon whom
228 may be served any lawful process in any action, suit, or
229 proceeding instituted by or on behalf of the ceding company.
230 This subparagraph does not limit or alter the capacity of
231 parties to a reinsurance agreement to agree to an alternative
232 dispute resolution mechanism, except to the extent that such

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233 agreements are unenforceable under applicable insolvency or
234 delinquency laws.

235 3. The assuming insurer's written consent to pay all final
236 judgments, wherever enforcement is sought, obtained by a ceding
237 insurer or its legal successor which have been declared
238 enforceable in the jurisdiction where the judgment was obtained.

239 4. Each reinsurance agreement must include a provision
240 requiring the assuming insurer to provide security in an amount
241 equal to 100 percent of the assuming insurer's liabilities
242 attributable to reinsurance ceded pursuant to that agreement, if
243 the assuming insurer resists enforcement of a final judgment
244 that is enforceable under the law of the jurisdiction in which
245 it was obtained or of a properly enforceable arbitration award,
246 whether obtained by the ceding insurer or by its legal successor
247 on behalf of its resolution estate.

248 5. The assuming insurer's confirmation that it is not
249 presently participating in any solvent scheme of arrangement
250 which involves this state's ceding insurers, and must agree to
251 notify the ceding insurer and the office and to provide security
252 in an amount equal to 100 percent of the assuming insurer's
253 liabilities to the ceding insurer if the assuming insurer enters
254 into such a solvent scheme of arrangement. Such security must be
255 consistent with subsection (3) and this subsection.

256 (e) If requested by the office, the assuming insurer or its
257 legal successor must provide on behalf of itself and any legal
258 predecessors certain documentation to the office pursuant to
259 criteria set forth by commission rule.

260 (f) The assuming insurer must maintain a practice of prompt
261 payment of claims under reinsurance agreements pursuant to

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262 criteria set forth by commission rule.

263 (g) The assuming insurer's supervisory authority must
264 confirm to the office on an annual basis, on a form adopted by
265 the commission, that, as of the preceding December 31 or at the
266 annual date otherwise statutorily reported to the reciprocal
267 jurisdiction, the assuming insurer complied with the
268 requirements of paragraphs (b) and (c).

269 (h) This subsection does not preclude an assuming insurer
270 from providing the office with information on a voluntary basis.

271 (i) If subject to a legal process of rehabilitation,
272 liquidation, or conservation, as applicable, the ceding insurer
273 or its representative may seek and, if determined appropriate by
274 the court in which the proceedings are pending, obtain an order
275 requiring that the assuming insurer post security for all
276 outstanding ceded liabilities.

277 (j) This subsection does not limit or alter the capacity of
278 parties to a reinsurance agreement to agree on requirements for
279 security or other terms in the reinsurance agreement, except as
280 expressly prohibited by this section or other applicable law or
281 rule of the commission.

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

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291 2. This paragraph does not alter or impair a ceding
292 insurer's right to take credit for reinsurance, to the extent
293 that credit is not available under this subsection, if the
294 reinsurance qualifies for credit under any other applicable
295 provision of this section.

296 3. This subsection does not authorize an assuming insurer
297 to withdraw or reduce the security provided under any
298 reinsurance agreement, except as permitted by the terms of the
299 agreement.

300 4. This subsection does not limit or alter the capacity of
301 parties to any reinsurance agreement to renegotiate the
302 agreement.

303 (1) If the office determines that an assuming insurer no
304 longer meets one or more of the requirements under this
305 subsection, the office may revoke or suspend the eligibility of
306 the assuming insurer for recognition under this subsection.

307 1. During the suspension of an assuming insurer's
308 eligibility, a reinsurance agreement issued, amended, or renewed
309 after the effective date of the suspension does not qualify for
310 credit except to the extent that the assuming insurer's
311 obligations under the contract are secured in accordance with
312 this subsection.

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

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320 consistent with this subsection.

321 (5)~~(4)~~ An asset allowed or a deduction from liability taken
322 for the reinsurance ceded by an insurer to an assuming insurer
323 not meeting the requirements of subsections (2), ~~and (3)~~, and
324 (4) is allowed in an amount not exceeding the liabilities
325 carried by the ceding insurer. The deduction must be in the
326 amount of funds held by or on behalf of the ceding insurer,
327 including funds held in trust for the ceding insurer, under a
328 reinsurance contract with the assuming insurer as security for
329 the payment of obligations thereunder, if the security is held
330 in the United States subject to withdrawal solely by, and under
331 the exclusive control of, the ceding insurer, or, in the case of
332 a trust, held in a qualified United States financial
333 institution, as defined in paragraph (6) (b) ~~(5) (b)~~. This
334 security may be in the form of:

335 (a) Cash in United States dollars;

336 (b) Securities listed by the Securities Valuation Office of
337 the National Association of Insurance Commissioners and
338 qualifying as admitted assets pursuant to part II of chapter
339 625;

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

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

347 (6) (a) ~~(5) (a)~~ For purposes of paragraph (5) (c) ~~(4) (c)~~
348 regarding letters of credit, a "qualified United States

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349 financial institution" means an institution that:

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

353 2. Is regulated, supervised, and examined by United States
354 or state authorities having regulatory authority over banks and
355 trust companies; and

356 3. Has been determined by either the office or the
357 Securities Valuation Office of the National Association of
358 Insurance Commissioners to meet such standards of financial
359 condition and standing as are considered necessary and
360 appropriate to regulate the quality of financial institutions
361 whose letters of credit will be acceptable to the office.

362 (12) ~~(11)~~

363 (b) The summary statement must be signed and attested to by
364 either the chief executive officer or the chief financial
365 officer of the reporting insurer. In addition to the summary
366 statement, the office may require the filing of any supporting
367 information relating to the ceding of such risks as it deems
368 necessary. If the summary statement prepared by the ceding
369 insurer discloses that the net effect of a reinsurance treaty or
370 treaties (or series of treaties with one or more affiliated
371 reinsurers entered into for the purpose of avoiding the
372 following threshold amount) at any time results in an increase
373 of more than 25 percent to the insurer's surplus as to
374 policyholders, then the insurer shall certify in writing to the
375 office that the relevant reinsurance treaty or treaties comply
376 with the accounting requirements contained in any rule adopted
377 by the commission under subsection (15) ~~(14)~~. If such

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378 certificate is filed after the summary statement of such
379 reinsurance treaty or treaties, the insurer shall refile the
380 summary statement with the certificate. In any event, the
381 certificate must state that a copy of the certificate was sent
382 to the reinsurer under the reinsurance treaty.

383 ~~(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2.,~~
384 ~~as such provision existed prior to July 1, 2000, which fails to~~
385 ~~obtain accreditation pursuant to this section prior to December~~
386 ~~30, 2003, shall have its approval terminated by operation of law~~
387 ~~on that date.~~

388 Section 2. This act shall take effect July 1, 2020.