

1 A bill to be entitled
2 An act relating to credit for reinsurance; amending s.
3 624.610, F.S.; making a technical change; adding
4 conditions under which a ceding insurer must be
5 allowed credit for reinsurance; transferring specified
6 authority and duties relating to credit for
7 reinsurance from the Commissioner of Insurance to the
8 Office of Insurance Regulation; revising the attorney
9 designation requirement in reinsurance agreements with
10 certain assuming insurers under certain circumstances;
11 defining the terms "reciprocal jurisdiction" and
12 "covered agreement"; requiring the office to publish a
13 list of reciprocal jurisdictions on its website;
14 authorizing the office to remove reciprocal
15 jurisdictions under a specified circumstance;
16 specifying requirements for assuming insurers and
17 reinsurance agreements; specifying documentation
18 requirements; authorizing a ceding insurer or its
19 representative that is subject to rehabilitation,
20 liquidation, or conservation to seek a certain court
21 order; providing construction; specifying a limitation
22 on credit taken by a ceding insurer; requiring the
23 office to publish on its website a list of certain
24 assuming insurers; authorizing the office to revoke or
25 suspend an assuming insurer's eligibility under

26 | certain circumstances; prohibiting credit for
 27 | reinsurance under certain circumstances; providing
 28 | exceptions; making technical changes; conforming
 29 | provisions to changes made by the act; providing an
 30 | effective date.

31 |
 32 | Be It Enacted by the Legislature of the State of Florida:

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

41 | 624.610 Reinsurance.—

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

51 States branch of an alien assuming insurer, in the state through
 52 which it is entered and licensed or authorized to transact
 53 insurance or reinsurance.

54 (3)

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

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

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

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

75 b. The form of the trust and any trust amendments must be

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

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

94 | 3. The following requirements apply to the following
95 | categories of assuming insurer:

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

101 million. Not less than 50 percent of the funds in the trust
102 covering the assuming insurer's liabilities attributable to
103 reinsurance ceded by United States ceding insurers and trusteed
104 surplus shall consist of assets of a quality substantially
105 similar to that required in part II of chapter 625. Clean,
106 irrevocable, unconditional, and evergreen letters of credit,
107 issued or confirmed by a qualified United States financial
108 institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no
109 later than December 31 of the year for which the filing is made
110 and in the possession of the trust on or before the filing date
111 of its annual statement, may be used to fund the remainder of
112 the trust and trusteed surplus.

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

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

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

126 | and reinsurance liabilities attributable to business written in
 127 | the United States; and

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

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

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

144 | (e) If the reinsurance is ceded to an assuming insurer not
 145 | meeting the requirements of paragraph (a), paragraph (b),
 146 | paragraph (c), or paragraph (d), the office commissioner may
 147 | allow credit, but only if the assuming insurer holds surplus in
 148 | excess of \$250 million and has a secure financial strength
 149 | rating from at least two statistical rating organizations deemed
 150 | acceptable by the office commissioner as having experience and

151 expertise in rating insurers doing business in Florida,
152 including, but not limited to, Standard & Poor's, Moody's
153 Investors Service, Fitch Ratings, A.M. Best Company, and
154 Demotech. In determining whether credit should be allowed, the
155 office ~~commissioner~~ shall consider the following:

156 1. The domiciliary regulatory jurisdiction of the assuming
157 insurer.

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

161 3. The substance of financial and operating standards for
162 reinsurers in the domiciliary jurisdiction.

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

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

170 6. The history of performance by reinsurers in the
171 domiciliary jurisdiction.

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

175 8. Any other matters deemed relevant by the office

176 ~~commissioner~~. The office commissioner shall give appropriate
177 consideration to insurer group ratings that may have been
178 issued. The office commissioner may, in lieu of granting full
179 credit under this subsection, reduce the amount required to be
180 held in trust under paragraph (c).

181 (f) If the assuming insurer is not authorized or
182 accredited to transact insurance or reinsurance in this state
183 pursuant to paragraph (a) or paragraph (b), the credit permitted
184 by paragraph (c) or paragraph (d) must not be allowed unless the
185 assuming insurer agrees in the reinsurance agreements:

186 1.a. That in the event of the failure of the assuming
187 insurer to perform its obligations under the terms of the
188 reinsurance agreement, the assuming insurer, at the request of
189 the ceding insurer, shall submit to the jurisdiction of any
190 court of competent jurisdiction in any state of the United
191 States, will comply with all requirements necessary to give the
192 court jurisdiction, and will abide by the final decision of the
193 court or of any appellate court in the event of an appeal; and

194 b. To designate the Chief Financial Officer, pursuant to
195 s. 48.151, ~~or a designated attorney~~ as its true and lawful
196 attorney upon whom may be served any lawful process in any
197 action, suit, or proceeding instituted by or on behalf of the
198 ceding company.

199 2. This paragraph is not intended to conflict with or
200 override the obligation of the parties to a reinsurance

HB 733

2021

201 agreement to arbitrate their disputes, if this obligation is
202 created in the agreement.

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

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

210 1. A non-United States jurisdiction that is subject to an
211 in-force covered agreement with the United States, each within
212 its legal authority; or, in the case of a covered agreement
213 between the United States and the European Union, a jurisdiction
214 that is a member state of the European Union. As used in this
215 subsection, the term "covered agreement" means an agreement
216 entered into pursuant to the Dodd-Frank Wall Street Reform and
217 Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is
218 currently in effect or in a period of provisional application
219 and which addresses the elimination, under specified conditions,
220 of collateral requirements as a condition for entering into any
221 reinsurance agreement with a ceding insurer domiciled in this
222 state or for allowing the ceding insurer to recognize credit for
223 reinsurance.

224 2. A United States jurisdiction that meets the
225 requirements for accreditation under the Financial Regulation

226 Standards and Accreditation Program of the National Association
227 of Insurance Commissioners.

228 3. A qualified jurisdiction, as determined by the office,
229 which is not otherwise described in subparagraph 1. or
230 subparagraph 2. and which meets all of the following additional
231 requirements, consistent with the terms and conditions of in-
232 force covered agreements, as specified by commission rule:

233 a. The jurisdiction allows an insurer domiciled, or having
234 its head office, in the jurisdiction to take credit for
235 reinsurance ceded to an insurer domiciled in the United States
236 in the same manner as reinsurance ceded to insurers domiciled in
237 that jurisdiction.

238 b. The jurisdiction does not require an assuming insurer
239 domiciled in the United States to establish or maintain a local
240 presence as a condition for entering into a reinsurance
241 agreement with any ceding insurer subject to regulation by the
242 jurisdiction or as a condition for allowing the ceding insurer
243 to take credit for the ceded risk.

244 c. The jurisdiction provides written confirmation that it
245 recognizes the state regulatory approach to group supervision
246 and group capital and that insurers and insurance groups
247 domiciled, or maintaining their headquarters, in a jurisdiction
248 accredited by the National Association of Insurance
249 Commissioners are subject only to worldwide prudential insurance
250 group supervision by the domiciliary state and are not subject

251 to group supervision at the level of the worldwide parent
252 undertaking of the insurance or reinsurance group by the
253 qualified jurisdiction.

254 d. The jurisdiction provides written confirmation that
255 information regarding insurers and their parent, subsidiary, or
256 affiliated entities shall be provided to the office in
257 accordance with a memorandum of understanding or similar
258 document between the office and such qualified jurisdiction.

259
260 The office shall timely publish on its website a list of
261 reciprocal jurisdictions. The office may remove a reciprocal
262 jurisdiction determined to no longer meet the requirements of
263 this paragraph.

264 (b)1. The assuming insurer must have and maintain on an
265 ongoing basis minimum capital and surplus, or its equivalent,
266 calculated according to the methodology of its domiciliary
267 jurisdiction, in the amount of \$250,000,000 or in a greater
268 amount specified by commission rule.

269 2. If the assuming insurer is an association, including
270 incorporated and individual unincorporated underwriters, it must
271 have and maintain on an ongoing basis:

272 a. Minimum capital and surplus equivalents, or net of
273 liabilities, calculated according to the methodology applicable
274 in its domiciliary jurisdiction, in the amount of \$250,000,000
275 or in a greater amount specified by commission rule.

276 b. A central fund containing a balance of \$250,000,000 or
277 a greater amount specified by commission rule.

278 (c) If credit is allowed for reinsurance ceded to the
279 assuming insurer pursuant to:

280 1. Subparagraph (a)1., the assuming insurer must maintain
281 a minimum solvency or capital ratio specified in the applicable
282 covered agreement.

283 2. Subparagraph (a)2., the assuming insurer must maintain
284 a risk-based capital ratio of 300 percent of the authorized
285 control level, calculated in accordance with s. 624.4085.

286 3. Subparagraph (a)3., the assuming insurer must maintain
287 a solvency or capital ratio determined by the office to be an
288 effective measure of solvency.

289 (d) The assuming insurer must, in a form specified by the
290 commission:

291 1. Agree to provide prompt written notice and explanation
292 to the office if the assuming insurer falls below the minimum
293 requirements set forth in paragraph (b) or paragraph (c), or if
294 any regulatory action is taken against it for serious
295 noncompliance with applicable law of any jurisdiction.

296 2. Consent in writing to the jurisdiction of the courts of
297 this state and to the designation of the Chief Financial
298 Officer, pursuant to s. 48.151, as its true and lawful attorney
299 upon whom may be served any lawful process in any action, suit,
300 or proceeding instituted by or on behalf of the ceding insurer.

301 This subparagraph does not limit or alter in any way the
302 capacity of parties to a reinsurance agreement to agree to an
303 alternative dispute resolution mechanism, except to the extent
304 that such agreement is unenforceable under applicable insolvency
305 or delinquency laws.

306 3. Consent in writing to pay all final judgments, wherever
307 enforcement is sought, obtained by a ceding insurer or its legal
308 successor which have been declared enforceable in the
309 jurisdiction where the judgment was obtained.

310 4. Confirm in writing that it will include in each
311 reinsurance agreement a provision requiring the assuming insurer
312 to provide security in an amount equal to 100 percent of the
313 assuming insurer's liabilities attributable to reinsurance ceded
314 pursuant to that agreement, if the assuming insurer resists
315 enforcement of a final judgment that is enforceable under the
316 law of the jurisdiction in which it was obtained or enforcement
317 of a properly enforceable arbitration award, whether obtained by
318 the ceding insurer or by its legal successor on behalf of its
319 resolution estate.

320 5. Confirm in writing that it is not presently
321 participating in any solvent scheme of arrangement which
322 involves this state's ceding insurers, and agree to notify the
323 ceding insurer and the office and to provide security in an
324 amount equal to 100 percent of the assuming insurer's
325 liabilities to the ceding insurer if the assuming insurer enters

326 into such a solvent scheme of arrangement. Such security must be
327 consistent with subsection (5) or as specified by commission
328 rule.

329 (e) If requested by the office, the assuming insurer or
330 its legal successor must provide, on behalf of itself and any
331 legal predecessors, the following additional documentation:

332 1. The assuming insurer's annual audited financial
333 statements, for the 2-year period before entering into the
334 reinsurance agreement and on an annual basis thereafter, in
335 accordance with the applicable law of the jurisdiction of its
336 head office or domiciliary jurisdiction, as applicable,
337 including the external audit report.

338 2. The solvency and financial condition report or
339 actuarial opinion, if filed with the assuming insurer's
340 supervisor, for the 2-year period before entering into the
341 reinsurance agreement.

342 3. Before entering into the reinsurance agreement and not
343 more than semiannually thereafter, an updated list of all
344 disputed and overdue reinsurance claims outstanding for 90 days
345 or more regarding reinsurance assumed from ceding insurers
346 domiciled in the United States.

347 4. Before entering into the reinsurance agreement and not
348 more than semiannually thereafter, information regarding the
349 assuming insurer's assumed reinsurance by ceding insurer, ceded
350 reinsurance by the assuming insurer, and reinsurance recoverable

351 on paid and unpaid losses by the assuming insurer.

352 5. Additional information as reasonably required by the
353 office.

354 (f) The assuming insurer must maintain a practice of
355 prompt payment of claims under reinsurance agreements and must
356 report to the office reinsurance recoverables that are more than
357 90 days overdue or that are in dispute, as specified by
358 commission rule.

359 (g) The assuming insurer must annually provide to the
360 office confirmation from its reciprocal jurisdiction, on a form
361 adopted by the commission or as otherwise specified by
362 commission rule, that, as of the preceding December 31 or as of
363 the annual date otherwise statutorily reported to the reciprocal
364 jurisdiction, the assuming insurer complied with the
365 requirements of paragraphs (b) and (c).

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

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

374 (j) This subsection does not limit or alter in any way the
375 capacity of parties to a reinsurance agreement to agree on

376 requirements for security or other terms in the reinsurance
377 agreement, except as expressly prohibited by this section or
378 other applicable law or commission rule.

379 (k)1. Credit may be taken under this subsection only for
380 reinsurance agreements entered into, amended, or renewed on or
381 after the date on which the assuming insurer has satisfied the
382 requirements to assume reinsurance under this subsection, and
383 only with respect to losses incurred and reserves reported on or
384 after the later of the date on which the assuming insurer has
385 met all eligibility requirements pursuant to this subsection or
386 the effective date of the new reinsurance agreement, amendment,
387 or renewal.

388 2. This paragraph does not alter or impair a ceding
389 insurer's right to take credit for reinsurance for which, and to
390 the extent that, credit is not available under this subsection,
391 if the reinsurance qualifies for credit under any other
392 applicable provision of law or commission rule.

393 3. This subsection does not authorize an assuming insurer
394 to withdraw or reduce the security provided under any
395 reinsurance agreement, except as authorized by the terms of the
396 agreement.

397 4. This subsection does not limit or alter in any way the
398 capacity of parties to any reinsurance agreement to renegotiate
399 the agreement.

400 (1) The office shall timely publish on its website a list

401 of assuming insurers that meet all of the requirements of this
402 subsection.

403 (m) If the office determines that an assuming insurer no
404 longer meets one or more of the requirements of this subsection,
405 the office may revoke or suspend the eligibility of the assuming
406 insurer for recognition under this subsection.

407 1. During the suspension of an assuming insurer's
408 eligibility, a reinsurance agreement issued, amended, or renewed
409 after the effective date of the suspension does not qualify for
410 credit, except to the extent that the assuming insurer's
411 obligations under the contract are secured in accordance with
412 subsection (5).

413 2. If an assuming insurer's eligibility is revoked, a
414 credit for reinsurance may not be granted after the effective
415 date of the revocation with respect to any reinsurance agreement
416 entered into by the assuming insurer, including a reinsurance
417 agreement entered into before the date of revocation, except to
418 the extent that the assuming insurer's obligations under the
419 contract are secured in a form acceptable to the office and
420 consistent with subsection (5).

421 (5)-(4) An asset allowed or a reduction ~~deduction~~ from
422 liability taken for the reinsurance ceded by an insurer to an
423 assuming insurer not meeting the requirements of subsections
424 (2), and (3), and (4) is allowed in an amount not exceeding the
425 liabilities carried by the ceding insurer. The reduction

426 ~~deduction~~ must be in the amount of funds held by or on behalf of
 427 the ceding insurer, including funds held in trust for the ceding
 428 insurer, under a reinsurance contract with the assuming insurer
 429 as security for the payment of obligations thereunder, if the
 430 security is held in the United States subject to withdrawal
 431 solely by, and under the exclusive control of, the ceding
 432 insurer, or, in the case of a trust, held in a qualified United
 433 States financial institution, as defined in paragraph (6) (b)
 434 ~~(5) (b)~~. This security may be in the form of:

- 435 (a) Cash in United States dollars;
- 436 (b) Securities listed by the Securities Valuation Office
 437 of the National Association of Insurance Commissioners and
 438 qualifying as admitted assets pursuant to part II of chapter
 439 625;
- 440 (c) Clean, irrevocable, unconditional letters of credit,
 441 issued or confirmed by a qualified United States financial
 442 institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no
 443 later than December 31 of the year for which the filing is made,
 444 and in the possession of, or in trust for, the ceding company on
 445 or before the filing date of its annual statement; or
- 446 (d) Any other form of security acceptable to the office.

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

- 450 1. Is organized or, in the case of a United States office

451 of a foreign banking organization, is licensed under the laws of
452 the United States or any state thereof;

453 2. Is regulated, supervised, and examined by United States
454 or state authorities having regulatory authority over banks and
455 trust companies; and

456 3. Has been determined by either the office or the
457 Securities Valuation Office of the National Association of
458 Insurance Commissioners to meet such standards of financial
459 condition and standing as are considered necessary and
460 appropriate to regulate the quality of financial institutions
461 whose letters of credit will be acceptable to the office.

462 (12) ~~(11)~~

463 (b) The summary statement must be signed and attested to
464 by either the chief executive officer or the chief financial
465 officer of the reporting insurer. In addition to the summary
466 statement, the office may require the filing of any supporting
467 information relating to the ceding of such risks as it deems
468 necessary. If the summary statement prepared by the ceding
469 insurer discloses that the net effect of a reinsurance treaty or
470 treaties (or series of treaties with one or more affiliated
471 reinsurers entered into for the purpose of avoiding the
472 following threshold amount) at any time results in an increase
473 of more than 25 percent to the insurer's surplus as to
474 policyholders, then the insurer shall certify in writing to the
475 office that the relevant reinsurance treaty or treaties comply

HB 733

2021

476 | with the accounting requirements contained in any rule adopted
477 | by the commission under subsection (15) ~~(14)~~. If such
478 | certificate is filed after the summary statement of such
479 | reinsurance treaty or treaties, the insurer shall refile the
480 | summary statement with the certificate. In any event, the
481 | certificate must state that a copy of the certificate was sent
482 | to the reinsurer under the reinsurance treaty.

483 | Section 2. This act shall take effect July 1, 2021.