

1 HB199  
2 148959-3  
3 By Representative Hill  
4 RFD: Insurance  
5 First Read: 07-FEB-13

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 Relating to the Insurance Department; to further  
9 provide for the regulation of reinsurance; to add Chapter 5B  
10 to Title 27, Code of Alabama 1975; and to repeal Section  
11 27-5-12, Code of Alabama 1975.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Chapter 5B is added to Title 27, Code of  
14 Alabama 1975, to read as follows:

15 Chapter 5B. Reinsurance.

16 Section 27-5B-1. Purpose.

17 The purpose of this chapter is to protect the  
18 interest of insureds, claimants, ceding insurers, assuming  
19 insurers, and the public generally. The Legislature declares  
20 its intent is to ensure adequate regulation of insurers and  
21 reinsurers and adequate protection for those to whom they owe  
22 obligations. In furtherance of that state interest, the  
23 Legislature provides a mandate that upon the insolvency of a  
24 non-U.S. insurer or reinsurer that provides security to fund  
25 its U.S. obligations in accordance with this chapter, the  
26 assets representing the security shall be maintained in the  
27 United States and claims shall be filed with and valued by the

1 state insurance commissioner with regulatory oversight, and  
2 the assets shall be distributed, in accordance with the  
3 insurance laws of the state in which the trust is domiciled  
4 that are applicable to the liquidation of domestic U.S.  
5 insurance companies. The Legislature declares that the matters  
6 contained in this chapter are fundamental to the business of  
7 insurance in accordance with 15 U.S.C. §§ 1011-1012.

8 §27-5B-2. Reinsurance permitted.

9 (a) An insurer authorized under this title may  
10 accept reinsurance only of such risks and retain risk thereon  
11 within such limits as it is otherwise authorized to insure.

12 (b) An insurer authorized under this title may  
13 reinsure all, or any part, of any particular risk with any  
14 solvent insurer.

15 §27-5B-3. Credit allowed a domestic ceding insurer.

16 Credit for reinsurance shall be allowed a domestic  
17 ceding insurer as either an asset or a reduction from  
18 liability on account of reinsurance ceded only when the  
19 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,  
20 27-5B-6, 27-5B-7, 27-5B-8, or 27-5B-9. Credit shall be allowed  
21 under Sections 27-5B-4, 27-5B-5, or 27-B5-6 only as respects  
22 cessions of those kinds or classes of business which the  
23 assuming insurer is licensed or otherwise permitted to write  
24 or assume in its state of domicile or, in the case of a U.S.  
25 branch of an alien assuming insurer, in the state through  
26 which it is entered and licensed to transact insurance or  
27 reinsurance. Credit shall be allowed under Section 27-5B-6 or

1 27-5B-7 only if the applicable requirements of Section  
2 27-5B-10 have been satisfied.

3 §27-5B-4. Licensed reinsurer.

4 Credit shall be allowed when the reinsurance is  
5 ceded to an assuming insurer that is licensed to transact  
6 insurance or reinsurance in this state.

7 §27-5B-5. Accredited reinsurer.

8 Credit shall be allowed when the reinsurance is  
9 ceded to an assuming insurer that is accredited by the  
10 commissioner as a reinsurer in this state. In order to be  
11 eligible for accreditation, a reinsurer must do all of the  
12 following:

13 (1) File with the commissioner evidence of its  
14 submission to this state's jurisdiction.

15 (2) Submit to this state's authority to examine its  
16 books and records.

17 (3) Be licensed to transact insurance or reinsurance  
18 in at least one state, or in the case of a U.S. branch of an  
19 alien assuming insurer, be entered through and licensed to  
20 transact insurance or reinsurance in at least one state.

21 (4) File annually with the commissioner a copy of  
22 its annual statement filed with the insurance department of  
23 its state of domicile and a copy of its most recent audited  
24 financial statement.

25 (5) Demonstrate to the satisfaction of the  
26 commissioner that it has adequate financial capacity to meet  
27 its reinsurance obligations and is otherwise qualified to

1 assume reinsurance from domestic insurers. An assuming insurer  
2 is deemed to meet this requirement as of the time of its  
3 application if it maintains a surplus as regards policyholders  
4 in an amount not less than twenty million dollars  
5 (\$20,000,000) and its accreditation has not been denied by the  
6 commissioner within 90 days after submission of its  
7 application.

8 §27-5B-6. Reinsurer domiciled in state with  
9 substantially similar law.

10 (a) Credit shall be allowed when the reinsurance is  
11 ceded to an assuming insurer that is domiciled in, or in the  
12 case of a U.S. branch of an alien assuming insurer is entered  
13 through, a state that employs standards regarding credit for  
14 reinsurance substantially similar to those applicable under  
15 this chapter and the assuming insurer or U.S. branch of an  
16 alien assuming insurer does both of the following:

17 (1) Maintains a surplus as regards policyholders in  
18 an amount not less than twenty million dollars (\$20,000,000).

19 (2) Submits to the authority of this state to  
20 examine its books and records.

21 (b) The requirement of subdivision (1) of subsection  
22 (a) does not apply to reinsurance ceded and assumed pursuant  
23 to pooling arrangements among insurers in the same holding  
24 company system.

25 §27-5B-7. Reinsurer maintaining a trust fund.

26 (a) Credit shall be allowed when the reinsurance is  
27 ceded to an assuming insurer that maintains a trust fund in a

1 qualified U.S. financial institution, as defined in subsection  
2 (b) of Section 27-5B-15, for the payment of the valid claims  
3 of its U.S. ceding insurers, their assigns and successors in  
4 interest. To enable the commissioner to determine the  
5 sufficiency of the trust fund, the assuming insurer shall  
6 report annually to the commissioner information substantially  
7 the same as that required to be reported on the NAIC Annual  
8 Statement form by licensed insurers. The assuming insurer  
9 shall submit to examination of its books and records by the  
10 commissioner and bear the expense of examination.

11 (b) (1) Credit for reinsurance shall not be granted  
12 under this section unless the form of the trust and any  
13 amendments to the trust have been approved by either:

14 a. The commissioner of the state where the trust is  
15 domiciled.

16 b. The commissioner of another state who, pursuant  
17 to the terms of the trust instrument, has accepted principal  
18 regulatory oversight of the trust.

19 (2) The form of the trust and any trust amendments  
20 also shall be filed with the commissioner of every state in  
21 which the ceding insurer beneficiaries of the trust are  
22 domiciled. The trust instrument shall provide that contested  
23 claims shall be valid and enforceable upon the final order of  
24 any court of competent jurisdiction in the United States. The  
25 trust shall vest legal title to its assets in its trustees for  
26 the benefit of the assuming insurer's U.S. ceding insurers,  
27 their assigns and successors in interest. The trust and the

1 assuming insurer shall be subject to examination as determined  
2 by the commissioner.

3 (3) The trust shall remain in effect for as long as  
4 the assuming insurer has outstanding obligations due under the  
5 reinsurance agreements subject to the trust. No later than  
6 February 28 of each year the trustee of the trust shall report  
7 to the commissioner in writing the balance of the trust and  
8 listing the trust's investments at the preceding year-end and  
9 shall certify the date of termination of the trust, if so  
10 planned, or certify that the trust will not expire prior to  
11 the following December 31.

12 (c) The following requirements apply to the  
13 following categories of assuming insurer:

14 (1) The trust fund for a single assuming insurer  
15 shall consist of funds in trust in an amount not less than the  
16 assuming insurer's liabilities attributable to reinsurance  
17 ceded by U.S. ceding insurers, and, in addition, the assuming  
18 insurer shall maintain a trusteed surplus of not less than  
19 twenty million dollars (\$20,000,000), except as provided in  
20 subdivision (2).

21 (2) At any time after the assuming insurer has  
22 permanently discontinued underwriting new business secured by  
23 the trust for at least three full years, the commissioner with  
24 principal regulatory oversight of the trust may authorize a  
25 reduction in the required trusteed surplus, but only after a  
26 finding, based on an assessment of the risk, that the new  
27 required surplus level is adequate for the protection of U.S.

1 ceding insurers, policyholders and claimants in light of  
2 reasonably foreseeable adverse loss development. The risk  
3 assessment may involve an actuarial review, including an  
4 independent analysis of reserves and cash flows, and shall  
5 consider all material risk factors, including when applicable  
6 the lines of business involved, the stability of the incurred  
7 loss estimates and the effect of the surplus requirements on  
8 the assuming insurer's liquidity or solvency. The minimum  
9 required trusted surplus may not be reduced to an amount less  
10 than 30 percent of the assuming insurer's liabilities  
11 attributable to reinsurance ceded by U.S. ceding insurers  
12 covered by the trust.

13 (3)a. In the case of a group including incorporated  
14 and individual unincorporated underwriters:

15 1. For reinsurance ceded under reinsurance  
16 agreements with an inception, amendment or renewal date on or  
17 after August 1, 1995, the trust shall consist of a trusted  
18 account in an amount not less than the respective  
19 underwriter's several liabilities attributable to business  
20 ceded by U.S. domiciled ceding insurers to any underwriter of  
21 the group.

22 2. For reinsurance ceded under reinsurance  
23 agreements with an inception date on or before July 31, 1995,  
24 and not amended or renewed after that date, notwithstanding  
25 the other provisions of this chapter, the trust shall consist  
26 of a trusted account in an amount not less than the  
27 respective underwriter's several insurance and reinsurance

1 liabilities attributable to business written in the United  
2 States.

3 3. In addition to these trusts, the group shall  
4 maintain in trust a trustee surplus of which one hundred  
5 million dollars (\$100,000,000) shall be held jointly for the  
6 benefit of the U.S. domiciled ceding insurers of any member of  
7 the group for all years of account.

8 b. The incorporated members of the group shall not  
9 be engaged in any business other than underwriting as a member  
10 of the group and shall be subject to the same level of  
11 regulation and solvency control by the group's domiciliary  
12 regulator as are the unincorporated members.

13 c. Within 90 days after its financial statements are  
14 due to be filed with the group's domiciliary regulator, the  
15 group shall provide to the commissioner an annual  
16 certification by the group's domiciliary regulator of the  
17 solvency of each underwriter member; or if a certification is  
18 unavailable, financial statements, prepared by independent  
19 public accountants, of each underwriter member of the group.

20 (4) In the case of a group of incorporated  
21 underwriters under common administration, the group shall do  
22 all of the following:

23 a. Have continuously transacted an insurance  
24 business outside the United States for at least three (3)  
25 years immediately prior to making application for  
26 accreditation.

1           b. Maintain aggregate policyholders' surplus of at  
2 least ten billion dollars (\$10,000,000,000).

3           c. Maintain a trust fund in an amount not less than  
4 the group's several liabilities attributable to business ceded  
5 by U.S. domiciled ceding insurers to any member of the group  
6 pursuant to reinsurance contracts issued in the name of the  
7 group.

8           d. In addition, maintain a joint trustee surplus of  
9 which one hundred million dollars (\$100,000,000) shall be held  
10 jointly for the benefit of U.S. domiciled ceding insurers of  
11 any member of the group as additional security for these  
12 liabilities.

13           e. Within 90 days after its financial statements are  
14 due to be filed with the group's domiciliary regulator, make  
15 available to the commissioner an annual certification of each  
16 underwriter member's solvency by the member's domiciliary  
17 regulator and financial statements of each underwriter member  
18 of the group prepared by its independent public accountant.

19           §27-5B-8. Certified reinsurer.

20           (a) Credit shall be allowed when the reinsurance is  
21 ceded to an assuming insurer that is certified by the  
22 commissioner as a reinsurer in this state and secures its  
23 obligations in accordance with the requirements of this  
24 section. In order to be eligible for certification, the  
25 assuming insurer shall meet all of the following requirements:

26           (1) The assuming insurer must be domiciled and  
27 licensed to transact insurance or reinsurance in a qualified

1 jurisdiction, as determined by the commissioner pursuant to  
2 subsection (c).

3 (2) The assuming insurer must maintain minimum  
4 capital and surplus, or its equivalent, in an amount to be  
5 determined by the commissioner pursuant to regulation.

6 (3) The assuming insurer must maintain financial  
7 strength ratings from two or more rating agencies deemed  
8 acceptable by the commissioner pursuant to regulation.

9 (4) The assuming insurer must agree to submit to the  
10 jurisdiction of this state, appoint the commissioner as its  
11 agent for service of process in this state, and agree to  
12 provide security for 100 percent of the assuming insurer's  
13 liabilities attributable to reinsurance ceded by U.S. ceding  
14 insurers if it resists enforcement of a final U.S. judgment.

15 (5) The assuming insurer must agree to meet  
16 applicable information filing requirements as determined by  
17 the commissioner, both with respect to an initial application  
18 for certification and on an ongoing basis.

19 (6) The assuming insurer must satisfy any other  
20 requirements for certification deemed relevant by the  
21 commissioner.

22 (b) An association including incorporated and  
23 individual unincorporated underwriters may be a certified  
24 reinsurer. In order to be eligible for certification, in  
25 addition to satisfying requirements of subsection (a):

26 (1) The association shall satisfy its minimum  
27 capital and surplus requirements through the capital and

1 surplus equivalents (net of liabilities) of the association  
2 and its members, which shall include a joint central fund that  
3 may be applied to any unsatisfied obligation of the  
4 association or any of its members, in an amount determined by  
5 the commissioner to provide adequate protection.

6 (2) The incorporated members of the association  
7 shall not be engaged in any business other than underwriting  
8 as a member of the association and shall be subject to the  
9 same level of regulation and solvency control by the  
10 association's domiciliary regulator as are the unincorporated  
11 members.

12 (3) Within 90 days after its financial statements  
13 are due to be filed with the association's domiciliary  
14 regulator, the association shall provide to the commissioner  
15 an annual certification by the association's domiciliary  
16 regulator of the solvency of each underwriter member; or if a  
17 certification is unavailable, financial statements, prepared  
18 by independent public accountants, of each underwriter member  
19 of the association.

20 (c) (1) The commissioner shall create and publish a  
21 list of qualified jurisdictions, under which an assuming  
22 insurer licensed and domiciled in such jurisdiction is  
23 eligible to be considered for certification by the  
24 commissioner as a certified reinsurer.

25 (2) In order to determine whether the domiciliary  
26 jurisdiction of a non-U.S. assuming insurer is eligible to be  
27 recognized as a qualified jurisdiction, the commissioner shall

1 evaluate the appropriateness and effectiveness of the  
2 reinsurance supervisory system of the jurisdiction, both  
3 initially and on an ongoing basis, and consider the rights,  
4 benefits and the extent of reciprocal recognition afforded by  
5 the non-U.S. jurisdiction to reinsurers licensed and domiciled  
6 in the U.S. A qualified jurisdiction must agree to share  
7 information and cooperate with the commissioner with respect  
8 to all certified reinsurers domiciled within the jurisdiction.  
9 A jurisdiction may not be recognized as a qualified  
10 jurisdiction if the commissioner has determined that the  
11 jurisdiction does not adequately and promptly enforce final  
12 U.S. judgments and arbitration awards. Additional factors may  
13 be considered in the discretion of the commissioner.

14 (3) A list of qualified jurisdictions shall be  
15 published through the National Associations of Insurance  
16 Commissioners committee process. The commissioner shall  
17 consider this list in determining qualified jurisdictions. If  
18 the commissioner approves a jurisdiction as qualified that  
19 does not appear on the list of qualified jurisdictions, the  
20 commissioner shall provide thoroughly documented justification  
21 in accordance with criteria to be developed under regulations.

22 (4) U.S. jurisdictions that meet the requirement for  
23 accreditation under the National Associations of Insurance  
24 Commissioners financial standards and accreditation program  
25 shall be recognized as qualified jurisdictions.

26 (5) If a certified reinsurer's domiciliary  
27 jurisdiction ceases to be a qualified jurisdiction, the

1 commissioner has the discretion to suspend the reinsurer's  
2 certification indefinitely, in lieu of revocation.

3 (d) The commissioner shall assign a rating to each  
4 certified reinsurer, giving due consideration to the financial  
5 strength ratings that have been assigned by rating agencies  
6 deemed acceptable by the commissioner pursuant to regulation.  
7 The commissioner shall publish a list of all certified  
8 reinsurers and their ratings.

9 (e) (1) A certified reinsurer shall secure  
10 obligations assumed from U.S. ceding insurers under this  
11 subsection at a level consistent with its rating, as specified  
12 in regulations promulgated by the commissioner.

13 (2) In order for a domestic ceding insurer to  
14 qualify for full financial statement credit for reinsurance  
15 ceded to a certified reinsurer, the certified reinsurer shall  
16 maintain security in a form acceptable to the commissioner and  
17 consistent with the provisions of Section 27-5B-14, or in a  
18 multibeneficiary trust in accordance with Section 27-5B-7,  
19 except as otherwise provided in this section.

20 (3) If a certified reinsurer maintains a trust to  
21 fully secure its obligations subject to Section 27-5B-7, and  
22 chooses to secure its obligations incurred as a certified  
23 reinsurer in the form of a multibeneficiary trust, the  
24 certified reinsurer shall maintain separate trust accounts for  
25 its obligations incurred under reinsurance agreements issued  
26 or renewed as a certified reinsurer with reduced security as  
27 permitted by this section or comparable laws of other U.S.

1 jurisdictions and for its obligations subject to Section  
2 27-5B-7. It shall be a condition to the grant of certification  
3 under Section 27-5B-8 that the certified reinsurer shall have  
4 bound itself, by the language of the trust and agreement with  
5 the commissioner with principal regulatory oversight of each  
6 such trust account, to fund, upon termination of any such  
7 trust account, out of the remaining surplus of such trust any  
8 deficiency of any other such trust account.

9 (4) The minimum trustee surplus requirements  
10 provided in Section 27-5B-7 are not applicable with respect to  
11 a multibeneficiary trust maintained by a certified reinsurer  
12 for the purpose of securing obligations incurred under this  
13 section, except that such trust shall maintain a minimum  
14 trustee surplus of ten million dollars (\$10,000,000).

15 (5) With respect to obligations incurred by a  
16 certified reinsurer under this section, if the security is  
17 insufficient, the commissioner shall reduce the allowable  
18 credit by an amount proportionate to the deficiency, and has  
19 the discretion to impose further reductions in allowable  
20 credit upon finding that there is a material risk that the  
21 certified reinsurer's obligations will not be paid in full  
22 when due.

23 (6)a. For purposes of this section, a certified  
24 reinsurer whose certification has been terminated for any  
25 reason shall be treated as a certified reinsurer required to  
26 secure 100 percent of its obligations.

1           b. As used in this section, the term "terminated"  
2 refers to revocation, suspension, voluntary surrender and  
3 inactive status.

4           c. If the commissioner continues to assign a higher  
5 rating as permitted by other provisions of this chapter, this  
6 requirement does not apply to a certified reinsurer in  
7 inactive status or to a reinsurer whose certification has been  
8 suspended.

9           (f) If an applicant for certification has been  
10 certified as a reinsurer in an NAIC accredited jurisdiction,  
11 the commissioner has the discretion to defer to that  
12 jurisdiction's certification, and has the discretion to defer  
13 to the rating assigned by that jurisdiction, and such assuming  
14 insurer shall be considered to be a certified reinsurer in  
15 this state.

16           (g) A certified reinsurer that ceases to assume new  
17 business in this state may request to maintain its  
18 certification in inactive status in order to continue to  
19 qualify for a reduction in security for its in-force business.  
20 An inactive certified reinsurer shall continue to comply with  
21 all applicable requirements of this section, and the  
22 commissioner shall assign a rating that takes into account, if  
23 relevant, the reasons why the reinsurer is not assuming new  
24 business.

25           §27-5B-9. Credit for reinsurance required by law.

26           Credit shall be allowed when the reinsurance is  
27 ceded to an assuming insurer not meeting the requirements of

1 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, or 27-5B-8, but  
2 only as to the insurance of risks located in jurisdictions  
3 where the reinsurance is required by applicable law or  
4 regulation of that jurisdiction.

5 §27-5B-10. Reinsurer not licensed, accredited or  
6 certified - additional requirements.

7 (a) If the assuming insurer is not licensed,  
8 accredited or certified to transact insurance or reinsurance  
9 in this state, the credit permitted by Sections 27-5B-6 and  
10 27-5B-7 shall not be allowed unless the assuming insurer  
11 agrees in the reinsurance agreements:

12 (1) That in the event of the failure of the assuming  
13 insurer to perform its obligations under the terms of the  
14 reinsurance agreement, the assuming insurer, at the request of  
15 the ceding insurer, shall submit to the jurisdiction of any  
16 court of competent jurisdiction in any state of the United  
17 States, will comply with all requirements necessary to give  
18 the court jurisdiction, and will abide by the final decision  
19 of the court or of any appellate court in the event of an  
20 appeal.

21 (2) To designate the commissioner or a designated  
22 attorney as its true and lawful attorney upon whom may be  
23 served any lawful process in any action, suit or proceeding  
24 instituted by or on behalf of the ceding insurer.

25 (b) This section is not intended to conflict with or  
26 override the obligation of the parties to a reinsurance

1 agreement to arbitrate their disputes, if this obligation is  
2 created in the agreement.

3 §27-5B-11. Reinsurer not licensed or accredited or  
4 subject to substantially similar laws - additional  
5 requirements.

6 If the assuming insurer does not meet the  
7 requirements of Section 27-5B-4, 27-5B-5 or 27-5B-6, the  
8 credit permitted by Section 27-5B-7 or 27-5B-8 shall not be  
9 allowed unless the assuming insurer agrees in the trust  
10 agreements to the following conditions:

11 (1) Notwithstanding any other provisions in the  
12 trust instrument, if the trust fund is inadequate because it  
13 contains an amount less than the amount required by subsection  
14 (c) of Section 27-5B-7, or if the grantor of the trust has  
15 been declared insolvent or placed into receivership,  
16 rehabilitation, liquidation or similar proceedings under the  
17 laws of its state or country of domicile, the trustee shall  
18 comply with an order of the commissioner with regulatory  
19 oversight over the trust or with an order of a court of  
20 competent jurisdiction directing the trustee to transfer to  
21 the commissioner with regulatory oversight all of the assets  
22 of the trust fund.

23 (2) The assets shall be distributed by and claims  
24 shall be filed with and valued by the commissioner with  
25 regulatory oversight in accordance with the laws of the state  
26 in which the trust is domiciled that are applicable to the  
27 liquidation of domestic insurance companies.

1           (3) If the commissioner with regulatory oversight  
2 determines that the assets of the trust fund or any part  
3 thereof are not necessary to satisfy the claims of the U.S.  
4 ceding insurers of the grantor of the trust, the assets or  
5 part thereof shall be returned by the commissioner with  
6 regulatory oversight to the trustee for distribution in  
7 accordance with the trust agreement.

8           (4) The grantor shall waive any right otherwise  
9 available to it under U.S. law that is inconsistent with this  
10 provision.

11           Section 27-5B-12. Accredited or certified reinsurer  
12 ceasing to meet requirements.

13           (a) If an accredited or certified reinsurer ceases  
14 to meet the requirements for accreditation or certification,  
15 the commissioner may suspend or revoke the reinsurer's  
16 accreditation or certification.

17           (b) The commissioner must give the reinsurer notice  
18 and opportunity for hearing. The suspension or revocation may  
19 not take effect until after the commissioner's order on  
20 hearing, unless any of the following occurs:

21           (1) The reinsurer waives its right to hearing.

22           (2) The commissioner's order is based on regulatory  
23 action by the reinsurer's domiciliary jurisdiction or the  
24 voluntary surrender or termination of the reinsurer's  
25 eligibility to transact insurance or reinsurance business in  
26 its domiciliary jurisdiction or in the primary certifying

1 state of the reinsurer under subsection (f) of Section 27-5B-8.

2 (3) The commissioner finds that an emergency  
3 requires immediate action and a court of competent  
4 jurisdiction has not stayed the commissioner's action.

5 (c) While a reinsurer's accreditation or  
6 certification is suspended, no reinsurance contract issued or  
7 renewed after the effective date of the suspension qualifies  
8 for credit except to the extent that the reinsurer's  
9 obligations under the contract are secured in accordance with  
10 Section 27-5B-14. If a reinsurer's accreditation or  
11 certification is revoked, no credit for reinsurance may be  
12 granted after the effective date of the revocation except to  
13 the extent that the reinsurer's obligations under the contract  
14 are secured in accordance with subsection (e) of Section  
15 27-5B-8 or Section 27-5B-14.

16 §27-5B-13. Concentration Risk.

17 (a) A ceding insurer shall take steps to manage its  
18 reinsurance recoverables proportionate to its own book of  
19 business. A domestic ceding insurer shall notify the  
20 commissioner within 30 days after reinsurance recoverables  
21 from any single assuming insurer, or group of affiliated  
22 assuming insurers, exceeds 50 percent of the domestic ceding  
23 insurer's last reported surplus to policyholders, or after it  
24 is determined that reinsurance recoverables from any single  
25 assuming insurer, or group of affiliated assuming insurers, is  
26 likely to exceed this limit. The notification shall

1 demonstrate that the exposure is safely managed by the  
2 domestic ceding insurer.

3 (b) A ceding insurer shall take steps to diversify  
4 its reinsurance program. A domestic ceding insurer shall  
5 notify the commissioner within 30 days after ceding to any  
6 single assuming insurer, or group of affiliated assuming  
7 insurers, more than 20 percent of the ceding insurer's gross  
8 written premium in the prior calendar year, or after it has  
9 determined that the reinsurance ceded to any single assuming  
10 insurer, or group of affiliated assuming insurers, is likely  
11 to exceed this limit. The notification shall demonstrate that  
12 the exposure is safely managed by the domestic ceding insurer.

13 §27-5B-14. Asset or Reduction from Liability for  
14 Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer  
15 not Meeting the Requirements of Sections 27-5B-3 through  
16 27-5B-13.

17 An asset or a reduction from liability for the  
18 reinsurance ceded by a domestic insurer to an assuming insurer  
19 not meeting the requirements of Section 27-5B-3, 27-5B-4,  
20 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-9, 27-5B-10,  
21 27-5B-11, 27-5B-12 or 27-5B-13 shall be allowed in an amount  
22 not exceeding the liabilities carried by the ceding insurer.  
23 The reduction shall be in the amount of funds held by or on  
24 behalf of the ceding insurer, including funds held in trust  
25 for the ceding insurer, under a reinsurance contract with the  
26 assuming insurer as security for the payment of obligations  
27 thereunder, if the security is held in the United States

1 subject to withdrawal solely by, and under the exclusive  
2 control of, the ceding insurer; or, in the case of a trust,  
3 held in a qualified U.S. financial institution, as defined in  
4 subsection (b) of Section 27-5B-15. This security may be in  
5 the form of any of the following:

6 (1) Cash.

7 (2) Securities listed by the Securities Valuation  
8 Office of the National Association of Insurance Commissioners,  
9 including those deemed exempt from filing as defined by the  
10 Purposes and Procedures Manual of the Securities Valuation  
11 Office, and qualifying as admitted assets.

12 (3) Clean, irrevocable, unconditional letters of  
13 credit, issued or confirmed by a qualified U.S. financial  
14 institution, as defined in subsection (a) of Section 27-5B-15,  
15 effective no later than December 31 of the year for which the  
16 filing is being made, and in the possession of, or in trust  
17 for, the ceding insurer on or before the filing date of its  
18 annual statement.

19 (4) Letters of credit meeting applicable standards  
20 of issuer acceptability as of the dates of their issuance (or  
21 confirmation) shall, notwithstanding the issuing (or  
22 confirming) institution's subsequent failure to meet  
23 applicable standards of issuer acceptability, continue to be  
24 acceptable as security until their expiration, extension,  
25 renewal, modification or amendment, whichever first occurs.

26 (5) Any other form of security acceptable to the  
27 commissioner.

1                   Section 27-5B-15. Qualified U.S. Financial  
2                   Institutions.

3                   (a) For purposes of subdivision (3) of Section  
4                   27-5B-14, a "qualified U.S. financial institution" means an  
5                   institution that meets all of the following:

6                   (1) Is organized or (in the case of a U.S. office of  
7                   a foreign banking organization) licensed, under the laws of  
8                   the United States or any state thereof.

9                   (2) Is regulated, supervised and examined by U.S.  
10                  federal or state authorities having regulatory authority over  
11                  banks and trust companies.

12                  (3) Has been determined by either the commissioner  
13                  or the Securities Valuation Office of the National Association  
14                  of Insurance Commissioners to meet such standards of financial  
15                  condition and standing as are considered necessary and  
16                  appropriate to regulate the quality of financial institutions  
17                  whose letters of credit will be acceptable to the  
18                  commissioner.

19                  (b) A "qualified U.S. financial institution" means,  
20                  for purposes of those provisions of this law specifying those  
21                  institutions that are eligible to act as a fiduciary of a  
22                  trust, an institution that meets both of the following:

23                  (1) Is organized, or, in the case of a U.S. branch  
24                  or agency office of a foreign banking organization, licensed,  
25                  under the laws of the United States or any state thereof and  
26                  has been granted authority to operate with fiduciary powers.

1           (2) Is regulated, supervised and examined by federal  
2 or state authorities having regulatory authority over banks  
3 and trust companies.

4           §27-5B-16. Insolvency clause.

5           Except as provided in Section 27-5B-17, no credit  
6 shall be allowed, as an admitted asset or deduction from  
7 liability, to any ceding insurer for reinsurance placed with a  
8 reinsurer qualified under this chapter, unless the reinsurance  
9 contract provides, in substance, that in the event of the  
10 insolvency of the ceding insurer, the reinsurance shall be  
11 payable under a contract reinsured by the assuming insurer on  
12 the basis of reported claims allowed by the liquidation court,  
13 without diminution because of the insolvency of the ceding  
14 insurer. The payments shall be made directly to the ceding  
15 insurer or to its domiciliary liquidator except in either of  
16 the following instances:

17           (1) Where the contract or other written agreement  
18 specifically provides another payee of the reinsurance in the  
19 event of the insolvency of the ceding insurer.

20           (2) Where the assuming insurer, with the consent of  
21 the direct insured, has assumed the policy obligations of the  
22 ceding insurer as direct obligations of the assuming insurer  
23 to the payees under the policies and in substitution for the  
24 obligations of the ceding insurer to the payees.

25           §27-5B-17. Guaranty association election.

26           Notwithstanding Section 27-5B-16, in the event that  
27 a life and health insurance guaranty association has made the

1 election to succeed to the rights and obligations of the  
2 insolvent insurer under the contract of reinsurance, the  
3 reinsurer's liability to pay covered reinsured claims shall  
4 continue under the contract of reinsurance subject to the  
5 payment to the reinsurer of the reinsurance premiums for the  
6 coverage. Payment for the reinsured claims shall only be made  
7 by the reinsurer pursuant to the direction of the guaranty  
8 association or its designated successor. Any payment made at  
9 the direction of the guaranty association or its designated  
10 successor by the reinsurer shall discharge the reinsurer of  
11 all further liability to any other party for the claim  
12 payment.

13 §27-5B-18. Notice by domiciliary liquidator.

14 The reinsurance agreement may provide that the  
15 domiciliary liquidator of an insolvent ceding insurer shall  
16 give written notice to the assuming insurer of the pendency of  
17 a claim against the ceding insurer on the contract within a  
18 reasonable time after the claim is filed in the liquidation  
19 proceeding. During the pendency of the claim, any assuming  
20 insurer may investigate the claim and interpose, at its own  
21 expense, in the proceeding where the claim is to be  
22 adjudicated any defenses which it deems available to the  
23 ceding insurer, or its liquidator. The expense may be filed as  
24 a claim against the insolvent ceding insurer to the extent of  
25 a proportionate share of the benefit which may accrue to the  
26 ceding insurer solely as a result of the defense undertaken by  
27 the assuming insurer. Where two or more assuming insurers are

1 involved in the same claim and a majority in interest elect to  
2 interpose a defense to the claim, the expense shall be  
3 apportioned in accordance with the terms of the reinsurance  
4 agreement as though the expense had been incurred by the  
5 ceding insurer.

6 §27-5B-19. Rules.

7 The commissioner may adopt rules implementing the  
8 provisions of this chapter.

9 Section 2. Section 27-5-12, Code of Alabama 1975, is  
10 repealed.

11 Section 3. This act shall become effective on the  
12 first day of January following its passage and approval by the  
13 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Insurance ..... . . . . . 07-FEB-13

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . . 21-FEB-13

Read for the third time and passed  
as amended..... . . . . . 18-APR-13

Yeas 92, Nays 0, Abstains 0

Jeff Woodard  
Clerk