

1 HB199  
2 147811-1  
3 By Representative Hill  
4 RFD: Insurance  
5 First Read: 07-FEB-13

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, an insurance company may  
9 enter into an insurance contract to insure a risk  
10 and the insurance company may reinsure the risk  
11 with another insurance company. The Insurance  
12 Department generally requires a company to maintain  
13 reserves and regulates when an insurance company  
14 entering into a reinsurance contract with another  
15 insurer may receive credit against its otherwise  
16 required reserves.

17 This bill would make Alabama's law  
18 regulating reinsurers and the credit an insurer may  
19 apply against its otherwise required reserves  
20 substantially similar to the current version of the  
21 Credit for Reinsurance Model Law developed by the  
22 National Association of Insurance Commissioners.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1           Relating to the Insurance Department; to further  
2 provide for the regulation of reinsurance; to add Chapter 5B  
3 to Title 27, Code of Alabama 1975; and to repeal Section  
4 27-5B-12, Code of Alabama 1975.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6           Section 1. Reinsurance.

7           Section 27-5B-20. Purpose.

8           The purpose of this chapter is to protect the  
9 interest of insureds, claimants, ceding insurers, assuming  
10 insurers, and the public generally. The Legislature declares  
11 its intent is to ensure adequate regulation of insurers and  
12 reinsurers and adequate protection for those to whom they owe  
13 obligations. In furtherance of that state interest, the  
14 Legislature provides a mandate that upon the insolvency of a  
15 non-U.S. insurer or reinsurer that provides security to fund  
16 its U.S. obligations in accordance with this chapter, the  
17 assets representing the security shall be maintained in the  
18 United States and claims shall be filed with and valued by the  
19 state insurance commissioner with regulatory oversight, and  
20 the assets shall be distributed, in accordance with the  
21 insurance laws of the state in which the trust is domiciled  
22 that are applicable to the liquidation of domestic U.S.  
23 insurance companies. The Legislature declares that the matters  
24 contained in this chapter are fundamental to the business of  
25 insurance in accordance with 15 U.S.C. §§ 1011-1012.

26           §27-5B-21. Reinsurance permitted.

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

4 (b) An insurer authorized under this title may  
5 reinsure all, or any part, of any particular risk with any  
6 solvent insurer.

7 §27-5B-22. Credit allowed a domestic ceding insurer.

8 Credit for reinsurance shall be allowed a domestic  
9 ceding insurer as either an asset or a reduction from  
10 liability on account of reinsurance ceded only when the  
11 reinsurer meets the requirements of Section 27-5B-23,  
12 27-5B-24, 27-5B-25, 27-5B-26, 27-5B-27, or 27-5B-28. Credit  
13 shall be allowed under Sections 27-5B-23, 27-5B-24, or  
14 27-B5-25 only as respects cessions of those kinds or classes  
15 of business which the assuming insurer is licensed or  
16 otherwise permitted to write or assume in its state of  
17 domicile or, in the case of a U.S. branch of an alien assuming  
18 insurer, in the state through which it is entered and licensed  
19 to transact insurance or reinsurance. Credit shall be allowed  
20 under Section 27-5B-25 or 27-5B-26 only if the applicable  
21 requirements of Section 27-5B-29 have been satisfied.

22 §27-5B-23. Licensed reinsurer.

23 Credit shall be allowed when the reinsurance is  
24 ceded to an assuming insurer that is licensed to transact  
25 insurance or reinsurance in this state.

26 §27-5B-24. Accredited reinsurer.

1           Credit shall be allowed when the reinsurance is  
2           ceded to an assuming insurer that is accredited by the  
3           commissioner as a reinsurer in this state. In order to be  
4           eligible for accreditation, a reinsurer must do all of the  
5           following:

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

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

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

14                  (4) File annually with the commissioner a copy of  
15                  its annual statement filed with the insurance department of  
16                  its state of domicile and a copy of its most recent audited  
17                  financial statement.

18                  (5) Demonstrate to the satisfaction of the  
19                  commissioner that it has adequate financial capacity to meet  
20                  its reinsurance obligations and is otherwise qualified to  
21                  assume reinsurance from domestic insurers. An assuming insurer  
22                  is deemed to meet this requirement as of the time of its  
23                  application if it maintains a surplus as regards policyholders  
24                  in an amount not less than twenty million dollars  
25                  (\$20,000,000) and its accreditation has not been denied by the  
26                  commissioner within 90 days after submission of its  
27                  application.

1           §27-5B-25. Reinsurer domiciled in state with  
2 substantially similar law.

3           (a) Credit shall be allowed when the reinsurance is  
4 ceded to an assuming insurer that is domiciled in, or in the  
5 case of a U.S. branch of an alien assuming insurer is entered  
6 through, a state that employs standards regarding credit for  
7 reinsurance substantially similar to those applicable under  
8 this chapter and the assuming insurer or U.S. branch of an  
9 alien assuming insurer does both of the following:

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

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

14           (b) The requirement of subdivision (1) of subsection  
15 (a) does not apply to reinsurance ceded and assumed pursuant  
16 to pooling arrangements among insurers in the same holding  
17 company system.

18           §27-5B-26. Reinsurer maintaining a trust fund.

19           (a) Credit shall be allowed when the reinsurance is  
20 ceded to an assuming insurer that maintains a trust fund in a  
21 qualified U.S. financial institution, as defined in subsection  
22 (b) of Section 27-5B-34, for the payment of the valid claims  
23 of its U.S. ceding insurers, their assigns and successors in  
24 interest. To enable the commissioner to determine the  
25 sufficiency of the trust fund, the assuming insurer shall  
26 report annually to the commissioner information substantially  
27 the same as that required to be reported on the NAIC Annual

1 Statement form by licensed insurers. The assuming insurer  
2 shall submit to examination of its books and records by the  
3 commissioner and bear the expense of examination.

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

7 a. The commissioner of the state where the trust is  
8 domiciled.

9 b. The commissioner of another state who, pursuant  
10 to the terms of the trust instrument, has accepted principal  
11 regulatory oversight of the trust.

12 (2) The form of the trust and any trust amendments  
13 also shall be filed with the commissioner of every state in  
14 which the ceding insurer beneficiaries of the trust are  
15 domiciled. The trust instrument shall provide that contested  
16 claims shall be valid and enforceable upon the final order of  
17 any court of competent jurisdiction in the United States. The  
18 trust shall vest legal title to its assets in its trustees for  
19 the benefit of the assuming insurer's U.S. ceding insurers,  
20 their assigns and successors in interest. The trust and the  
21 assuming insurer shall be subject to examination as determined  
22 by the commissioner.

23 (3) The trust shall remain in effect for as long as  
24 the assuming insurer has outstanding obligations due under the  
25 reinsurance agreements subject to the trust. No later than  
26 February 28 of each year the trustee of the trust shall report  
27 to the commissioner in writing the balance of the trust and

1 listing the trust's investments at the preceding year-end and  
2 shall certify the date of termination of the trust, if so  
3 planned, or certify that the trust will not expire prior to  
4 the following December 31.

5 (c) The following requirements apply to the  
6 following categories of assuming insurer:

7 (1) The trust fund for a single assuming insurer  
8 shall consist of funds in trust in an amount not less than the  
9 assuming insurer's liabilities attributable to reinsurance  
10 ceded by U.S. ceding insurers, and, in addition, the assuming  
11 insurer shall maintain a trustee surplus of not less than  
12 twenty million dollars (\$20,000,000), except as provided in  
13 subdivision (2).

14 (2) At any time after the assuming insurer has  
15 permanently discontinued underwriting new business secured by  
16 the trust for at least three full years, the commissioner with  
17 principal regulatory oversight of the trust may authorize a  
18 reduction in the required trustee surplus, but only after a  
19 finding, based on an assessment of the risk, that the new  
20 required surplus level is adequate for the protection of U.S.  
21 ceding insurers, policyholders and claimants in light of  
22 reasonably foreseeable adverse loss development. The risk  
23 assessment may involve an actuarial review, including an  
24 independent analysis of reserves and cash flows, and shall  
25 consider all material risk factors, including when applicable  
26 the lines of business involved, the stability of the incurred  
27 loss estimates and the effect of the surplus requirements on

1 the assuming insurer's liquidity or solvency. The minimum  
2 required trusteed surplus may not be reduced to an amount less  
3 than 30 percent of the assuming insurer's liabilities  
4 attributable to reinsurance ceded by U.S. ceding insurers  
5 covered by the trust.

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

8 1. For reinsurance ceded under reinsurance  
9 agreements with an inception, amendment or renewal date on or  
10 after August 1, 1995, the trust shall consist of a trusteed  
11 account in an amount not less than the respective  
12 underwriter's several liabilities attributable to business  
13 ceded by U.S. domiciled ceding insurers to any underwriter of  
14 the group.

15 2. For reinsurance ceded under reinsurance  
16 agreements with an inception date on or before July 31, 1995,  
17 and not amended or renewed after that date, notwithstanding  
18 the other provisions of this chapter, the trust shall consist  
19 of a trusteed account in an amount not less than the  
20 respective underwriter's several insurance and reinsurance  
21 liabilities attributable to business written in the United  
22 States.

23 3. In addition to these trusts, the group shall  
24 maintain in trust a trusteed surplus of which one hundred  
25 million dollars (\$100,000,000) shall be held jointly for the  
26 benefit of the U.S. domiciled ceding insurers of any member of  
27 the group for all years of account.

1           b. The incorporated members of the group shall not  
2 be engaged in any business other than underwriting as a member  
3 of the group and shall be subject to the same level of  
4 regulation and solvency control by the group's domiciliary  
5 regulator as are the unincorporated members.

6           c. Within 90 days after its financial statements are  
7 due to be filed with the group's domiciliary regulator, the  
8 group shall provide to the commissioner an annual  
9 certification by the group's domiciliary regulator of the  
10 solvency of each underwriter member; or if a certification is  
11 unavailable, financial statements, prepared by independent  
12 public accountants, of each underwriter member of the group.

13           (4) In the case of a group of incorporated  
14 underwriters under common administration, the group shall do  
15 all of the following:

16           a. Have continuously transacted an insurance  
17 business outside the United States for at least three (3)  
18 years immediately prior to making application for  
19 accreditation.

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

22           c. Maintain a trust fund in an amount not less than  
23 the group's several liabilities attributable to business ceded  
24 by U.S. domiciled ceding insurers to any member of the group  
25 pursuant to reinsurance contracts issued in the name of the  
26 group.

1           d. In addition, maintain a joint trusteed surplus of  
2           which one hundred million dollars (\$100,000,000) shall be held  
3           jointly for the benefit of U.S. domiciled ceding insurers of  
4           any member of the group as additional security for these  
5           liabilities.

6           e. Within 90 days after its financial statements are  
7           due to be filed with the group's domiciliary regulator, make  
8           available to the commissioner an annual certification of each  
9           underwriter member's solvency by the member's domiciliary  
10          regulator and financial statements of each underwriter member  
11          of the group prepared by its independent public accountant.

12           §27-5B-27. Certified reinsurer.

13          (a) Credit shall be allowed when the reinsurance is  
14          ceded to an assuming insurer that is certified by the  
15          commissioner as a reinsurer in this state and secures its  
16          obligations in accordance with the requirements of this  
17          section. In order to be eligible for certification, the  
18          assuming insurer shall meet all of the following requirements:

19           (1) The assuming insurer must be domiciled and  
20           licensed to transact insurance or reinsurance in a qualified  
21           jurisdiction, as determined by the commissioner pursuant to  
22           subsection (c).

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

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

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

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

14          (6) The assuming insurer must satisfy any other  
15 requirements for certification deemed relevant by the  
16 commissioner.

17          (b) An association including incorporated and  
18 individual unincorporated underwriters may be a certified  
19 reinsurer. In order to be eligible for certification, in  
20 addition to satisfying requirements of subsection (a):

21           (1) The association shall satisfy its minimum  
22 capital and surplus requirements through the capital and  
23 surplus equivalents (net of liabilities) of the association  
24 and its members, which shall include a joint central fund that  
25 may be applied to any unsatisfied obligation of the  
26 association or any of its members, in an amount determined by  
27 the commissioner to provide adequate protection.

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

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

15           (c) (1) The commissioner shall create and publish a  
16 list of qualified jurisdictions, under which an assuming  
17 insurer licensed and domiciled in such jurisdiction is  
18 eligible to be considered for certification by the  
19 commissioner as a certified reinsurer.

20           (2) In order to determine whether the domiciliary  
21 jurisdiction of a non-U.S. assuming insurer is eligible to be  
22 recognized as a qualified jurisdiction, the commissioner shall  
23 evaluate the appropriateness and effectiveness of the  
24 reinsurance supervisory system of the jurisdiction, both  
25 initially and on an ongoing basis, and consider the rights,  
26 benefits and the extent of reciprocal recognition afforded by  
27 the non-U.S. jurisdiction to reinsurers licensed and domiciled

1 in the U.S. A qualified jurisdiction must agree to share  
2 information and cooperate with the commissioner with respect  
3 to all certified reinsurers domiciled within the jurisdiction.  
4 A jurisdiction may not be recognized as a qualified  
5 jurisdiction if the commissioner has determined that the  
6 jurisdiction does not adequately and promptly enforce final  
7 U.S. judgments and arbitration awards. Additional factors may  
8 be considered in the discretion of the commissioner.

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

17 (4) U.S. jurisdictions that meet the requirement for  
18 accreditation under the National Associations of Insurance  
19 Commissioners financial standards and accreditation program  
20 shall be recognized as qualified jurisdictions.

21 (5) If a certified reinsurer's domiciliary  
22 jurisdiction ceases to be a qualified jurisdiction, the  
23 commissioner has the discretion to suspend the reinsurer's  
24 certification indefinitely, in lieu of revocation.

25 (d) The commissioner shall assign a rating to each  
26 certified reinsurer, giving due consideration to the financial  
27 strength ratings that have been assigned by rating agencies

1 deemed acceptable by the commissioner pursuant to regulation.  
2 The commissioner shall publish a list of all certified  
3 reinsurers and their ratings.

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

8 (2) In order for a domestic ceding insurer to  
9 qualify for full financial statement credit for reinsurance  
10 ceded to a certified reinsurer, the certified reinsurer shall  
11 maintain security in a form acceptable to the commissioner and  
12 consistent with the provisions of Section 27-5B-33, or in a  
13 multibeneficiary trust in accordance with Section 27-5B-26,  
14 except as otherwise provided in this section.

15 (3) If a certified reinsurer maintains a trust to  
16 fully secure its obligations subject to Section 27-5B-26, and  
17 chooses to secure its obligations incurred as a certified  
18 reinsurer in the form of a multibeneficiary trust, the  
19 certified reinsurer shall maintain separate trust accounts for  
20 its obligations incurred under reinsurance agreements issued  
21 or renewed as a certified reinsurer with reduced security as  
22 permitted by this section or comparable laws of other U.S.  
23 jurisdictions and for its obligations subject to Section  
24 27-5B-26. It shall be a condition to the grant of  
25 certification under Section 27-5B-27 that the certified  
26 reinsurer shall have bound itself, by the language of the  
27 trust and agreement with the commissioner with principal

1 regulatory oversight of each such trust account, to fund, upon  
2 termination of any such trust account, out of the remaining  
3 surplus of such trust any deficiency of any other such trust  
4 account.

5 (4) The minimum trustee surplus requirements  
6 provided in Section 27-5B-26 are not applicable with respect  
7 to a multibeneficiary trust maintained by a certified  
8 reinsurer for the purpose of securing obligations incurred  
9 under this section, except that such trust shall maintain a  
10 minimum trustee surplus of ten million dollars (\$10,000,000).

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

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

23 b. As used in this section, the term "terminated"  
24 refers to revocation, suspension, voluntary surrender and  
25 inactive status.

26 c. If the commissioner continues to assign a higher  
27 rating as permitted by other provisions of this chapter, this

1 requirement does not apply to a certified reinsurer in  
2 inactive status or to a reinsurer whose certification has been  
3 suspended.

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

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

20 §27-5B-28. Credit for reinsurance required by law.

21 Credit shall be allowed when the reinsurance is  
22 ceded to an assuming insurer not meeting the requirements of  
23 Section 27-5B-23, 27-5B-24, 27-5B-25, 27-5B-26, or 27-5B-27,  
24 but only as to the insurance of risks located in jurisdictions  
25 where the reinsurance is required by applicable law or  
26 regulation of that jurisdiction.

1           §27-5B-29. Reinsurer not licensed, accredited or  
2 certified - additional requirements.

3           (a) If the assuming insurer is not licensed,  
4 accredited or certified to transact insurance or reinsurance  
5 in this state, the credit permitted by Sections 27-5B-25 and  
6 27-5B-26 shall not be allowed unless the assuming insurer  
7 agrees in the reinsurance agreements:

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

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

21           (b) This section is not intended to conflict with or  
22 override the obligation of the parties to a reinsurance  
23 agreement to arbitrate their disputes, if this obligation is  
24 created in the agreement.

25           §27-5B-30. Reinsurer not licensed or accredited or  
26 subject to substantially similar laws - additional  
27 requirements.

1           If the assuming insurer does not meet the  
2 requirements of Section 27-5B-23, 27-5B-24 or 27-5B-25, the  
3 credit permitted by Section 27-5B-26 or 27-5B-27 shall not be  
4 allowed unless the assuming insurer agrees in the trust  
5 agreements to the following conditions:

6           (1) Notwithstanding any other provisions in the  
7 trust instrument, if the trust fund is inadequate because it  
8 contains an amount less than the amount required by subsection  
9 (c) of Section 27-5B-26, or if the grantor of the trust has  
10 been declared insolvent or placed into receivership,  
11 rehabilitation, liquidation or similar proceedings under the  
12 laws of its state or country of domicile, the trustee shall  
13 comply with an order of the commissioner with regulatory  
14 oversight over the trust or with an order of a court of  
15 competent jurisdiction directing the trustee to transfer to  
16 the commissioner with regulatory oversight all of the assets  
17 of the trust fund.

18           (2) The assets shall be distributed by and claims  
19 shall be filed with and valued by the commissioner with  
20 regulatory oversight in accordance with the laws of the state  
21 in which the trust is domiciled that are applicable to the  
22 liquidation of domestic insurance companies.

23           (3) If the commissioner with regulatory oversight  
24 determines that the assets of the trust fund or any part  
25 thereof are not necessary to satisfy the claims of the U.S.  
26 ceding insurers of the grantor of the trust, the assets or  
27 part thereof shall be returned by the commissioner with

1 regulatory oversight to the trustee for distribution in  
2 accordance with the trust agreement.

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

6 Section 27-5B-31. Accredited or certified reinsurer  
7 ceasing to meet requirements.

8 (a) If an accredited or certified reinsurer ceases  
9 to meet the requirements for accreditation or certification,  
10 the commissioner may suspend or revoke the reinsurer's  
11 accreditation or certification.

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

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

17 (2) The commissioner's order is based on regulatory  
18 action by the reinsurer's domiciliary jurisdiction or the  
19 voluntary surrender or termination of the reinsurer's  
20 eligibility to transact insurance or reinsurance business in  
21 its domiciliary jurisdiction or in the primary certifying  
22 state of the reinsurer under subsection (f) of Section  
23 27-5B-27.

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

1 (c) While a reinsurer's accreditation or  
2 certification is suspended, no reinsurance contract issued or  
3 renewed after the effective date of the suspension qualifies  
4 for credit except to the extent that the reinsurer's  
5 obligations under the contract are secured in accordance with  
6 Section 27-5B-33. If a reinsurer's accreditation or  
7 certification is revoked, no credit for reinsurance may be  
8 granted after the effective date of the revocation except to  
9 the extent that the reinsurer's obligations under the contract  
10 are secured in accordance with subsection (e) of Section  
11 27-5B-27 or Section 27-5B-33.

12 §27-5B-32. Concentration Risk.

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

25 (b) A ceding insurer shall take steps to diversify  
26 its reinsurance program. A domestic ceding insurer shall  
27 notify the commissioner within 30 days after ceding to any

1 single assuming insurer, or group of affiliated assuming  
2 insurers, more than 20 percent of the ceding insurer's gross  
3 written premium in the prior calendar year, or after it has  
4 determined that the reinsurance ceded to any single assuming  
5 insurer, or group of affiliated assuming insurers, is likely  
6 to exceed this limit. The notification shall demonstrate that  
7 the exposure is safely managed by the domestic ceding insurer.

8 §27-5B-33. Asset or Reduction from Liability for  
9 Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer  
10 not Meeting the Requirements of Sections 27-5B-22 through  
11 27-5B-32.

12 An asset or a reduction from liability for the  
13 reinsurance ceded by a domestic insurer to an assuming insurer  
14 not meeting the requirements of Section 27-5B-22, 27-5B-23,  
15 27-5B-24, 27-5B-25, 27-5B-26, 27-5B-27, 27-5B-28, 27-5B-29,  
16 27-5B-30, 27-5B-31 or 27-5B-32 shall be allowed in an amount  
17 not exceeding the liabilities carried by the ceding insurer.  
18 The reduction shall be in the amount of funds held by or on  
19 behalf of the ceding insurer, including funds held in trust  
20 for the ceding insurer, under a reinsurance contract with the  
21 assuming insurer as security for the payment of obligations  
22 thereunder, if the security is held in the United States  
23 subject to withdrawal solely by, and under the exclusive  
24 control of, the ceding insurer; or, in the case of a trust,  
25 held in a qualified U.S. financial institution, as defined in  
26 subsection (b) of Section 27-5B-34. This security may be in  
27 the form of any of the following:

1 (1) Cash.

2 (2) Securities listed by the Securities Valuation  
3 Office of the National Association of Insurance Commissioners,  
4 including those deemed exempt from filing as defined by the  
5 Purposes and Procedures Manual of the Securities Valuation  
6 Office, and qualifying as admitted assets.

7 (3) Clean, irrevocable, unconditional letters of  
8 credit, issued or confirmed by a qualified U.S. financial  
9 institution, as defined in subsection (a) of Section 27-5B-34,  
10 effective no later than December 31 of the year for which the  
11 filing is being made, and in the possession of, or in trust  
12 for, the ceding insurer on or before the filing date of its  
13 annual statement.

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

21 (5) Any other form of security acceptable to the  
22 commissioner.

23 Section 27-5B-34. Qualified U.S. Financial  
24 Institutions.

25 (a) For purposes of subdivision (3) of Section  
26 27-5B-33, a "qualified U.S. financial institution" means an  
27 institution that meets all of the following:

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

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

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

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

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

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

25 §27-5B-35. Insolvency clause.

26 Except as provided in Section 27-5B-36, no credit  
27 shall be allowed, as an admitted asset or deduction from

1 liability, to any ceding insurer for reinsurance placed with a  
2 reinsurer qualified under this chapter, unless the reinsurance  
3 contract provides, in substance, that in the event of the  
4 insolvency of the ceding insurer, the reinsurance shall be  
5 payable under a contract reinsured by the assuming insurer on  
6 the basis of reported claims allowed by the liquidation court,  
7 without diminution because of the insolvency of the ceding  
8 insurer. The payments shall be made directly to the ceding  
9 insurer or to its domiciliary liquidator except in either of  
10 the following instances:

11 (1) Where the contract or other written agreement  
12 specifically provides another payee of the reinsurance in the  
13 event of the insolvency of the ceding insurer.

14 (2) Where the assuming insurer, with the consent of  
15 the direct insured, has assumed the policy obligations of the  
16 ceding insurer as direct obligations of the assuming insurer  
17 to the payees under the policies and in substitution for the  
18 obligations of the ceding insurer to the payees.

19 §27-5B-36. Guaranty association election.

20 Notwithstanding Section 27-5B-35, in the event that  
21 a life and health insurance guaranty association has made the  
22 election to succeed to the rights and obligations of the  
23 insolvent insurer under the contract of reinsurance, the  
24 reinsurer's liability to pay covered reinsured claims shall  
25 continue under the contract of reinsurance subject to the  
26 payment to the reinsurer of the reinsurance premiums for the  
27 coverage. Payment for the reinsured claims shall only be made

1 by the reinsurer pursuant to the direction of the guaranty  
2 association or its designated successor. Any payment made at  
3 the direction of the guaranty association or its designated  
4 successor by the reinsurer shall discharge the reinsurer of  
5 all further liability to any other party for the claim  
6 payment.

7 §27-5B-37. Notice by domiciliary liquidator.

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

27 §27-5B-38. Rules.

1                   The commissioner may adopt rules implementing the  
2 provisions of this chapter.

3                   Section 2. Section 27-5B-12, Code of Alabama 1975,  
4 is repealed.

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