

1 SB245
2 147811-3
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 26-FEB-13

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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 27-5-12, Code of Alabama 1975.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 Chapter 5B. Reinsurance.

9 Section 27-5B-1. Purpose.

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

1 §27-5B-2. Reinsurance permitted.

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

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

8 §27-5B-3. Credit allowed a domestic ceding insurer.

9 Credit for reinsurance shall be allowed a domestic
10 ceding insurer as either an asset or a reduction from
11 liability on account of reinsurance ceded only when the
12 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,
13 27-5B-6, 27-5B-7, 27-5B-8, or 27-5B-9. Credit shall be allowed
14 under Sections 27-5B-4, 27-5B-5, or 27-B5-6 only as respects
15 cessions of those kinds or classes of business which the
16 assuming insurer is licensed or otherwise permitted to write
17 or assume in its state of domicile or, in the case of a U.S.
18 branch of an alien assuming insurer, in the state through
19 which it is entered and licensed to transact insurance or
20 reinsurance. Credit shall be allowed under Section 27-5B-6 or
21 27-5B-7 only if the applicable requirements of Section
22 27-5B-10 have been satisfied.

23 §27-5B-4. Licensed reinsurer.

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

27 §27-5B-5. 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-6. 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-7. 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-15, 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-8. 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-14, or in a
13 multibeneficiary trust in accordance with Section 27-5B-7,
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-7, 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-7. It shall be a condition to the grant of certification
25 under Section 27-5B-8 that the certified reinsurer shall have
26 bound itself, by the language of the trust and agreement with
27 the commissioner with principal regulatory oversight of each

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

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

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

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

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

25 c. If the commissioner continues to assign a higher
26 rating as permitted by other provisions of this chapter, this
27 requirement does not apply to a certified reinsurer in

1 inactive status or to a reinsurer whose certification has been
2 suspended.

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

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

19 §27-5B-9. Credit for reinsurance required by law.

20 Credit shall be allowed when the reinsurance is
21 ceded to an assuming insurer not meeting the requirements of
22 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, or 27-5B-8, but
23 only as to the insurance of risks located in jurisdictions
24 where the reinsurance is required by applicable law or
25 regulation of that jurisdiction.

26 §27-5B-10. Reinsurer not licensed, accredited or
27 certified - additional requirements.

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

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

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

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

23 §27-5B-11. Reinsurer not licensed or accredited or
24 subject to substantially similar laws - additional
25 requirements.

26 If the assuming insurer does not meet the
27 requirements of Section 27-5B-4, 27-5B-5 or 27-5B-6, the

1 credit permitted by Section 27-5B-7 or 27-5B-8 shall not be
2 allowed unless the assuming insurer agrees in the trust
3 agreements to the following conditions:

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

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

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

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

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

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

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

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

15 (2) The commissioner's order is based on regulatory
16 action by the reinsurer's domiciliary jurisdiction or the
17 voluntary surrender or termination of the reinsurer's
18 eligibility to transact insurance or reinsurance business in
19 its domiciliary jurisdiction or in the primary certifying
20 state of the reinsurer under subsection (f) of Section
21 27-5B-8.

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

25 (c) While a reinsurer's accreditation or
26 certification is suspended, no reinsurance contract issued or
27 renewed after the effective date of the suspension qualifies

1 for credit except to the extent that the reinsurer's
2 obligations under the contract are secured in accordance with
3 Section 27-5B-14. If a reinsurer's accreditation or
4 certification is revoked, no credit for reinsurance may be
5 granted after the effective date of the revocation except to
6 the extent that the reinsurer's obligations under the contract
7 are secured in accordance with subsection (e) of Section
8 27-5B-8 or Section 27-5B-14.

9 §27-5B-13. Concentration Risk.

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

22 (b) A ceding insurer shall take steps to diversify
23 its reinsurance program. A domestic ceding insurer shall
24 notify the commissioner within 30 days after ceding to any
25 single assuming insurer, or group of affiliated assuming
26 insurers, more than 20 percent of the ceding insurer's gross
27 written premium in the prior calendar year, or after it has

1 determined that the reinsurance ceded to any single assuming
2 insurer, or group of affiliated assuming insurers, is likely
3 to exceed this limit. The notification shall demonstrate that
4 the exposure is safely managed by the domestic ceding insurer.

5 §27-5B-14. Asset or Reduction from Liability for
6 Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer
7 not Meeting the Requirements of Sections 27-5B-3 through
8 27-5B-13.

9 An asset or a reduction from liability for the
10 reinsurance ceded by a domestic insurer to an assuming insurer
11 not meeting the requirements of Section 27-5B-3, 27-5B-4,
12 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-9, 27-5B-10,
13 27-5B-11, 27-5B-12 or 27-5B-13 shall be allowed in an amount
14 not exceeding the liabilities carried by the ceding insurer.
15 The reduction shall be in the amount of funds held by or on
16 behalf of the ceding insurer, including funds held in trust
17 for the ceding insurer, under a reinsurance contract with the
18 assuming insurer as security for the payment of obligations
19 thereunder, if the security is held in the United States
20 subject to withdrawal solely by, and under the exclusive
21 control of, the ceding insurer; or, in the case of a trust,
22 held in a qualified U.S. financial institution, as defined in
23 subsection (b) of Section 27-5B-15. This security may be in
24 the form of any of the following:

25 (1) Cash.

26 (2) Securities listed by the Securities Valuation
27 Office of the National Association of Insurance Commissioners,

1 including those deemed exempt from filing as defined by the
2 Purposes and Procedures Manual of the Securities Valuation
3 Office, and qualifying as admitted assets.

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

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

18 (5) Any other form of security acceptable to the
19 commissioner.

20 Section 27-5B-15. Qualified U.S. Financial
21 Institutions.

22 (a) For purposes of subdivision (3) of Section
23 27-5B-14, a "qualified U.S. financial institution" means an
24 institution that meets all of the following:

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

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

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

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

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

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

22 §27-5B-16. Insolvency clause.

23 Except as provided in Section 27-5B-17, no credit
24 shall be allowed, as an admitted asset or deduction from
25 liability, to any ceding insurer for reinsurance placed with a
26 reinsurer qualified under this chapter, unless the reinsurance
27 contract provides, in substance, that in the event of the

1 insolvency of the ceding insurer, the reinsurance shall be
2 payable under a contract reinsured by the assuming insurer on
3 the basis of reported claims allowed by the liquidation court,
4 without diminution because of the insolvency of the ceding
5 insurer. The payments shall be made directly to the ceding
6 insurer or to its domiciliary liquidator except in either of
7 the following instances:

8 (1) Where the contract or other written agreement
9 specifically provides another payee of the reinsurance in the
10 event of the insolvency of the ceding insurer.

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

16 §27-5B-17. Guaranty association election.

17 Notwithstanding Section 27-5B-16, in the event that
18 a life and health insurance guaranty association has made the
19 election to succeed to the rights and obligations of the
20 insolvent insurer under the contract of reinsurance, the
21 reinsurer's liability to pay covered reinsured claims shall
22 continue under the contract of reinsurance subject to the
23 payment to the reinsurer of the reinsurance premiums for the
24 coverage. Payment for the reinsured claims shall only be made
25 by the reinsurer pursuant to the direction of the guaranty
26 association or its designated successor. Any payment made at
27 the direction of the guaranty association or its designated

1 successor by the reinsurer shall discharge the reinsurer of
2 all further liability to any other party for the claim
3 payment.

4 §27-5B-18. Notice by domiciliary liquidator.

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

24 §27-5B-19. Rules.

25 The commissioner may adopt rules implementing the
26 provisions of this chapter.

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

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