

1 HB32
2 203371-3
3 By Representatives Rich and Ellis
4 RFD: State Government
5 First Read: 02-FEB-21
6 PFD: 10/29/2020

1 ENGROSSED

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4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 Relating to insurance; to implement the reinsurance
9 collateral provisions of the covered agreements that were
10 entered into between the United States and the European Union
11 and the United Kingdom, and for those purposes to amend
12 Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19,
13 Code of Alabama 1975, and to add Sections 27-5B-8.1 and
14 27-5B-20 to the Code of Alabama 1975.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 27-5B-3, 27-5B-9, 27-5B-11,
17 27-5B-14, and 27-5B-19, Code of Alabama 1975, are amended to
18 read as follows:

19 "§27-5B-3.

20 "(a) Credit for reinsurance shall be allowed a
21 domestic ceding insurer as either an asset or a reduction from
22 liability on account of reinsurance ceded only when the
23 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,
24 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, or 27-5B-9.

25 "(b) The commissioner may adopt by rule specific
26 additional requirements relating to any of the following:

27 "(1) The valuation of assets or reserve credits.

1 "(2) The amount and forms of security supporting
2 reinsurance arrangements described in subsection (b) of
3 Section 27-5B-19.

4 "(3) The circumstances pursuant to which credit
5 shall be reduced or eliminated.

6 "(c) Credit shall be allowed under ~~Sections~~ Section
7 27-5B-4, 27-5B-5, or 27-B5-6 only as respects cessions of
8 those kinds or classes of business which the assuming insurer
9 is licensed or otherwise permitted to write or assume in its
10 state of domicile or, in the case of a U.S. branch of an alien
11 assuming insurer, in the state through which it is entered and
12 licensed to transact insurance or reinsurance. Credit shall be
13 allowed under Section 27-5B-6 or 27-5B-7 only if the
14 applicable requirements of Section 27-5B-10 have been
15 satisfied.

16 "§27-5B-9.

17 "Credit shall be allowed when the reinsurance is
18 ceded to an assuming insurer not meeting the requirements of
19 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, ~~or~~ 27-5B-8, or
20 27-5B-8.1, but only as to the insurance of risks located in
21 jurisdictions where the reinsurance is required by applicable
22 law or regulation of that jurisdiction.

23 "§27-5B-11.

24 "If the assuming insurer does not meet the
25 requirements of Section 27-5B-4, 27-5B-5, ~~or~~ 27-5B-6, or
26 27-5B-8.1, the credit permitted by Section 27-5B-7 or 27-5B-8

1 shall not be allowed unless the assuming insurer agrees in the
2 trust agreements to the following conditions:

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

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

20 "(3) If the commissioner with regulatory oversight
21 determines that the assets of the trust fund or any part
22 thereof are not necessary to satisfy the claims of the U.S.
23 ceding insurers of the grantor of the trust, the assets or
24 part thereof shall be returned by the commissioner with
25 regulatory oversight to the trustee for distribution in
26 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 "§27-5B-14.

5 "(a) An asset or a reduction from liability for the
6 reinsurance ceded by a domestic insurer to an assuming insurer
7 not meeting the requirements of Section 27-5B-3, 27-5B-4,
8 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, 27-5B-9,
9 27-5B-10, 27-5B-11, 27-5B-12, or 27-5B-13 shall be allowed in
10 an amount not exceeding the liabilities carried by the ceding
11 insurer.

12 "(b) In addition to any other authority of the
13 commissioner, the commissioner, by rule adopted pursuant to
14 subsection (b) of Section 27-5B-19, may adopt specific
15 additional requirements relating to any of the following:

16 "(1) The valuation of assets or reserve credits.

17 "(2) The amount and forms of security supporting
18 reinsurance arrangements described in subsection (b) of
19 Section 27-5B-19.

20 "(3) The circumstances pursuant to which credit will
21 be reduced or eliminated.

22 "(c) The reduction shall be in the amount of funds
23 held by or on behalf of the ceding insurer, including funds
24 held in trust for the ceding insurer, under a reinsurance
25 contract with the assuming insurer as security for the payment
26 of obligations thereunder, if the security is held in the
27 United States subject to withdrawal solely by, and under the

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

5 "(1) Cash.

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

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

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

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

27 "§27-5B-19.

1 "(a) The commissioner may adopt rules implementing
2 the provisions of this chapter.

3 "(b) In addition to the authority of the
4 commissioner pursuant to subsection (a), the commissioner may
5 adopt rules applicable to reinsurance arrangements as provided
6 in this subsection.

7 "(1) A rule adopted pursuant to this subsection may
8 apply only to reinsurance relating to any of the following:

9 "a. Life insurance policies with guaranteed nonlevel
10 gross premiums or guaranteed nonlevel benefits.

11 "b. Universal life insurance policies with
12 provisions resulting in the ability of a policyholder to keep
13 a policy in force over a secondary guarantee period.

14 "c. Variable annuities with guaranteed death or
15 living benefits.

16 "d. Long-term care insurance policies.

17 "e. Any other life and health insurance and annuity
18 products that the NAIC adopts model regulatory requirements
19 with respect to credit for reinsurance.

20 "(2) A rule adopted pursuant to paragraph a. or b.
21 of subdivision (1) may apply to any ~~treaty~~ reinsurance
22 agreement containing (i) policies issued on or after January
23 1, 2015, or (ii) policies issued prior to January 1, 2015, if
24 risk pertaining to the pre-2015 policies is ceded in
25 connection with the ~~treaty~~ reinsurance agreement, in whole or
26 in part, on or after January 1, 2015, or ~~treaties~~ reinsurance
27 agreements meeting both items (i) and (ii).

1 "(3) A rule adopted pursuant to this subsection may
2 require the ceding insurer, in calculating the amounts or
3 forms of security required to be held under rules adopted
4 under this authority, to use the valuation manual adopted by
5 the NAIC as described in subdivision (1) of subsection (b) of
6 Section 27-36A-15, including all amendments adopted by the
7 NAIC and in effect on the date as of which the calculation is
8 made, to the extent applicable.

9 "(4) A rule adopted pursuant to this subsection
10 shall not apply to cessions to an assuming insurer that meets
11 any of the following:

12 "a. The conditions set forth in Section 27-5B-8.1.

13 "b. Is certified in this state.

14 "c. Maintains at least two hundred fifty million
15 dollars (\$250,000,000) in capital and surplus when determined
16 in accordance with the Accounting Practices and Procedures
17 Manual of the NAIC, including all amendments thereto adopted
18 by the NAIC, excluding the impact of any permitted or
19 prescribed practices, and is either of the following:

20 "1. Licensed in at least 26 states.

21 "2. Licensed in at least 10 states, and licensed or
22 accredited in a total of at least 35 states.

23 "(5) The authority to adopt rules pursuant to this
24 subsection does not limit the commissioner's general authority
25 to adopt rules pursuant to subsection (a)."

26 Section 2. Sections 27-5B-8.1 and 27-5B-20 are added
27 to the Code of Alabama 1975, to read as follows:

1 §27-5B-8.1. Reinsurer domiciled in a reciprocal
2 jurisdiction.

3 (a) Credit shall be allowed when the reinsurance is
4 ceded to an assuming insurer meeting each of the following
5 conditions:

6 (1) The assuming insurer shall have its head office
7 or be domiciled in, as applicable, and be licensed in a
8 reciprocal jurisdiction. A reciprocal jurisdiction is a
9 jurisdiction that meets one of the following:

10 a. A non-U.S. jurisdiction that is subject to an
11 in-force covered agreement with the United States, each within
12 its legal authority, or, in the case of a covered agreement
13 between the United States and European Union, is a member
14 state of the European Union. For purposes of this subsection,
15 a covered agreement is an agreement entered into pursuant to
16 the Dodd-Frank Wall Street Reform and Consumer Protection Act,
17 31 U.S.C. §§313 and 314, that is currently in effect or in a
18 period of provisional application and addresses the
19 elimination, under specified conditions, of collateral
20 requirements as a condition for entering into any reinsurance
21 agreement with a ceding insurer domiciled in this state or for
22 allowing the ceding insurer to recognize credit for
23 reinsurance.

24 b. A U.S. jurisdiction that meets the requirements
25 for accreditation under the NAIC financial standards and
26 accreditation program.

1 c. A qualified jurisdiction, as determined by the
2 commissioner pursuant to subsection (c) of Section 27-5B-8,
3 which is not otherwise described in paragraph a. or b. and
4 which meets certain additional requirements, consistent with
5 the terms and conditions of in-force covered agreements, as
6 specified by the commissioner by rule.

7 (2) The assuming insurer shall have and maintain, on
8 an ongoing basis, minimum capital and surplus, or its
9 equivalent, calculated according to the methodology of its
10 domiciliary jurisdiction, in an amount to be set forth in
11 regulation. If the assuming reinsurer is an association,
12 including incorporated and individual unincorporated
13 underwriters, it shall have and maintain on an ongoing basis,
14 minimum capital and surplus equivalents, net of liabilities,
15 calculated according to the methodology applicable in its
16 domiciliary jurisdiction, and a central fund containing a
17 balance in amounts to set forth by rule.

18 (3) The assuming insurer shall have and maintain, on
19 an ongoing basis, a minimum solvency or capital ratio, as
20 applicable, which shall be set forth by rule. If the assuming
21 insurer is an association, including incorporated and
22 individual unincorporated underwriters, it shall have and
23 maintain, on an ongoing basis, a minimum solvency or capital
24 ratio in the reciprocal jurisdiction where the assuming
25 insurer has its head office or is domiciled, as applicable,
26 and is also licensed.

1 (4) The assuming insurer shall agree and provide
2 adequate assurance to the commissioner, in a form specified by
3 the commissioner pursuant to rule, to all of the following:

4 a. The assuming insurer shall provide prompt written
5 notice and explanation to the commissioner if it falls below
6 the minimum requirements set forth in subdivisions (2) and
7 (3), or if any regulatory action is taken against it for
8 serious noncompliance with applicable law.

9 b. The assuming insurer shall consent in writing to
10 the jurisdiction of the courts of this state and to the
11 appointment of the commissioner as agent for service of
12 process. The commissioner may require that consent for service
13 of process be provided to the commissioner and included in
14 each reinsurance agreement. Nothing in this paragraph shall
15 limit, or in any way alter, the capacity of parties to a
16 reinsurance agreement to agree to alternative dispute
17 resolution mechanisms, except to the extent the agreements are
18 unenforceable under applicable insolvency or delinquency laws.

19 c. The assuming insurer shall consent in writing to
20 pay all final judgments, wherever enforcement is sought,
21 obtained by a ceding insurer or its legal successor, that have
22 been declared enforceable in the jurisdiction where the
23 judgment was obtained.

24 d. Each reinsurance agreement shall include a
25 provision requiring the assuming insurer to provide security
26 in an amount equal to 100 percent of the assuming insurer's
27 liabilities attributable to reinsurance ceded pursuant to that

1 agreement if the assuming insurer resists enforcement of a
2 final judgment that is enforceable under the law of the
3 jurisdiction in which it was obtained or a properly
4 enforceable arbitration award, whether obtained by the ceding
5 insurer or by its legal successor on behalf of its resolution
6 estate.

7 e. The assuming insurer shall confirm that it is not
8 presently participating in any solvent scheme of arrangement
9 which involves this state's ceding insurers, and agrees to
10 notify the ceding insurer and the commissioner and to provide
11 security in an amount equal to 100 percent of the assuming
12 insurer's liabilities to the ceding insurer should the
13 assuming insurer enter into such a solvent scheme of
14 arrangement. The security shall be in a form consistent with
15 Sections 27-5B-8 and 27-5B-14 and as specified by the
16 commissioner by rule.

17 (5) The assuming insurer or its legal successor
18 shall provide, if requested by the commissioner, on behalf of
19 itself and any legal predecessors, certain documentation to
20 the commissioner as specified by the commissioner by rule.

21 (6) The assuming insurer shall maintain a practice
22 of prompt payment of claims under reinsurance agreements
23 pursuant to criteria set forth by rule.

24 (7) The assuming insurer's supervisory authority
25 shall confirm to the commissioner on an annual basis, as of
26 the preceding December 31 or at the annual date otherwise
27 statutorily reported to the reciprocal jurisdiction, that the

1 assuming insurer complies with the requirements set forth in
2 subdivisions (2) and (3).

3 (8) Nothing in this subsection precludes an assuming
4 insurer from providing the commissioner with information on a
5 voluntary basis.

6 (b) (1) The commissioner shall timely create and
7 publish a list of reciprocal jurisdictions.

8 (2) A list of reciprocal jurisdictions is published
9 through the NAIC Committee Process. The commissioner's list
10 shall include any reciprocal jurisdiction, as defined in
11 paragraph a. or b. of subdivision (1) of subsection (a), and
12 shall consider any other reciprocal jurisdiction included on
13 the NAIC list. The commissioner may approve a jurisdiction
14 that does not appear on the NAIC list of reciprocal
15 jurisdictions in accordance with criteria to be developed
16 under rules adopted by the commissioner.

17 (3) The commissioner may remove a jurisdiction from
18 the list of reciprocal jurisdictions upon a determination that
19 the jurisdiction no longer meets the requirements of a
20 reciprocal jurisdiction in accordance with a process set forth
21 in rules adopted by the commissioner, except that the
22 commissioner shall not remove from the list a reciprocal
23 jurisdiction as defined in paragraph a. or b. of subdivision
24 (1) of subsection (a). Upon removal of a reciprocal
25 jurisdiction from this list, credit for reinsurance ceded to
26 an assuming insurer which has its home office or is domiciled

1 in that jurisdiction shall be allowed, if otherwise allowed
2 pursuant to this chapter.

3 (c) The commissioner shall timely create and publish
4 a list of assuming insurers that have satisfied the conditions
5 set forth in this section and to which cessions shall be
6 granted credit in accordance with this section. The
7 commissioner may add an assuming insurer to the list if an
8 NAIC accredited jurisdiction has added the assuming insurer to
9 a list of assuming insurers or if, upon initial eligibility,
10 the assuming insurer submits the information to the
11 commissioner as required under subdivision (4) of subsection
12 (a) and complies with any additional requirements that the
13 commissioner may impose by rule, except to the extent that
14 they conflict with an applicable covered agreement.

15 (d) If the commissioner determines that an assuming
16 insurer no longer meets one or more of the requirements under
17 this section, the commissioner may revoke or suspend the
18 eligibility of the assuming insurer for recognition under this
19 section in accordance with procedures set forth by rule.

20 (1) While an assuming insurer's eligibility is
21 suspended, no reinsurance agreement issued, amended, or
22 renewed after the effective date of the suspension qualifies
23 for credit except to the extent that the assuming insurer's
24 obligations under the contract are secured in accordance with
25 Section 27-5B-14.

26 (2) If an assuming insurer's eligibility is revoked,
27 no credit for reinsurance may be granted after the effective

1 date of the revocation with respect to any reinsurance
2 agreements entered into by the assuming insurer, including
3 reinsurance agreements entered into prior to the date of
4 revocation, except to the extent that the assuming insurer's
5 obligations under the contract are secured in a form
6 acceptable to the commissioner and consistent with Section
7 27-5B-14.

8 (e) If subject to a legal process of rehabilitation,
9 liquidation, or conservation, as applicable, the ceding
10 insurer, or its representative, may seek and, if determined
11 appropriate by the court in which the proceedings are pending,
12 may obtain an order requiring that the assuming insurer post
13 security for all outstanding ceded liabilities.

14 (f) Nothing in this section shall limit or in any
15 way alter the capacity of parties to a reinsurance agreement
16 to agree on requirements for security or other terms in that
17 reinsurance agreement, except as expressly prohibited by this
18 chapter or other applicable law or rule.

19 (g) (1) Credit may be taken under this section only
20 for reinsurance agreements entered into, amended, or renewed
21 on or after the effective date of the act adding this section,
22 and only with respect to losses incurred and reserves reported
23 on or after the later of a. the date on which the assuming
24 insurer has met all eligibility requirements pursuant to
25 subsection (a), and b. the effective date of the new
26 reinsurance agreement, amendment, or renewal.

1 (2) This subsection does not alter or impair a
2 ceding insurer's right to take credit for reinsurance, to the
3 extent that credit is not available under this section, as
4 long as the reinsurance qualified for credit under any other
5 applicable provision of this chapter.

6 (3) Nothing in this section shall authorize an
7 assuming insurer to withdraw or reduce the security provided
8 under any reinsurance agreement except as permitted by the
9 terms of the agreement.

10 (4) Nothing in this section shall limit or in any
11 way alter the capacity of parties to any reinsurance agreement
12 to renegotiate the agreement.

13 §27-5B-20. Reinsurance Agreements Affected.

14 The amendments of this chapter and the additions to
15 this chapter by the act adding this section shall apply to all
16 cessions after the effective date of the act adding this
17 section under reinsurance agreements that have an inception,
18 anniversary, or renewal date not less than six months after
19 the effective date of the act adding this section.

20 Section 3. This act shall be effective on the first
21 day of January following upon its passage and approval by the
22 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 State Government
..... 02-FEB-21

Read for the second time and placed
on the calendar..... 03-FEB-21

Read for the third time and passed
as amended..... 11-FEB-21

Yeas 100, Nays 0, Abstains 1

Jeff Woodard
Clerk