

1 148959-2 : n : 02/20/2013 : Insurance Committee / ta

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3 HOUSE INSURANCE COMMITTEE SUBSTITUTE FOR HB199
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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

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

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Chapter 5B. Reinsurance.

10 Section 27-5B-1. Purpose.

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

1 contained in this chapter are fundamental to the business of
2 insurance in accordance with 15 U.S.C. §§ 1011-1012.

3 §27-5B-2. Reinsurance permitted.

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

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

10 §27-5B-3. Credit allowed a domestic ceding insurer.

11 Credit for reinsurance shall be allowed a domestic
12 ceding insurer as either an asset or a reduction from
13 liability on account of reinsurance ceded only when the
14 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,
15 27-5B-6, 27-5B-7, 27-5B-8, or 27-5B-9. Credit shall be allowed
16 under Sections 27-5B-4, 27-5B-5, or 27-B5-6 only as respects
17 cessions of those kinds or classes of business which the
18 assuming insurer is licensed or otherwise permitted to write
19 or assume in its state of domicile or, in the case of a U.S.
20 branch of an alien assuming insurer, in the state through
21 which it is entered and licensed to transact insurance or
22 reinsurance. Credit shall be allowed under Section 27-5B-6 or
23 27-5B-7 only if the applicable requirements of Section
24 27-5B-10 have been satisfied.

25 §27-5B-4. Licensed reinsurer.

1 Credit shall be allowed when the reinsurance is
2 ceded to an assuming insurer that is licensed to transact
3 insurance or reinsurance in this state.

4 §27-5B-5. Accredited reinsurer.

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

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

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

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

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

22 (5) Demonstrate to the satisfaction of the
23 commissioner that it has adequate financial capacity to meet
24 its reinsurance obligations and is otherwise qualified to
25 assume reinsurance from domestic insurers. An assuming insurer
26 is deemed to meet this requirement as of the time of its

1 application if it maintains a surplus as regards policyholders
2 in an amount not less than twenty million dollars
3 (\$20,000,000) and its accreditation has not been denied by the
4 commissioner within 90 days after submission of its
5 application.

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

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

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

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

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

23 §27-5B-7. Reinsurer maintaining a trust fund.

24 (a) Credit shall be allowed when the reinsurance is
25 ceded to an assuming insurer that maintains a trust fund in a
26 qualified U.S. financial institution, as defined in subsection

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

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

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

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

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

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

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

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

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

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

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

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

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

23 2. For reinsurance ceded under reinsurance
24 agreements with an inception date on or before July 31, 1995,
25 and not amended or renewed after that date, notwithstanding
26 the other provisions of this chapter, the trust shall consist

1 of a trustee account in an amount not less than the
2 respective underwriter's several insurance and reinsurance
3 liabilities attributable to business written in the United
4 States.

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

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

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

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

25 a. Have continuously transacted an insurance
26 business outside the United States for at least three (3)

1 years immediately prior to making application for
2 accreditation.

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

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

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

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

21 §27-5B-8. Certified reinsurer.

22 (a) Credit shall be allowed when the reinsurance is
23 ceded to an assuming insurer that is certified by the
24 commissioner as a reinsurer in this state and secures its
25 obligations in accordance with the requirements of this

1 section. In order to be eligible for certification, the
2 assuming insurer shall meet all of the following requirements:

3 (1) The assuming insurer must be domiciled and
4 licensed to transact insurance or reinsurance in a qualified
5 jurisdiction, as determined by the commissioner pursuant to
6 subsection (c).

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

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

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

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

23 (6) The assuming insurer must satisfy any other
24 requirements for certification deemed relevant by the
25 commissioner.

1 (b) An association including incorporated and
2 individual unincorporated underwriters may be a certified
3 reinsurer. In order to be eligible for certification, in
4 addition to satisfying requirements of subsection (a):

5 (1) The association shall satisfy its minimum
6 capital and surplus requirements through the capital and
7 surplus equivalents (net of liabilities) of the association
8 and its members, which shall include a joint central fund that
9 may be applied to any unsatisfied obligation of the
10 association or any of its members, in an amount determined by
11 the commissioner to provide adequate protection.

12 (2) The incorporated members of the association
13 shall not be engaged in any business other than underwriting
14 as a member of the association and shall be subject to the
15 same level of regulation and solvency control by the
16 association's domiciliary regulator as are the unincorporated
17 members.

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

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

6 (2) In order to determine whether the domiciliary
7 jurisdiction of a non-U.S. assuming insurer is eligible to be
8 recognized as a qualified jurisdiction, the commissioner shall
9 evaluate the appropriateness and effectiveness of the
10 reinsurance supervisory system of the jurisdiction, both
11 initially and on an ongoing basis, and consider the rights,
12 benefits and the extent of reciprocal recognition afforded by
13 the non-U.S. jurisdiction to reinsurers licensed and domiciled
14 in the U.S. A qualified jurisdiction must agree to share
15 information and cooperate with the commissioner with respect
16 to all certified reinsurers domiciled within the jurisdiction.
17 A jurisdiction may not be recognized as a qualified
18 jurisdiction if the commissioner has determined that the
19 jurisdiction does not adequately and promptly enforce final
20 U.S. judgments and arbitration awards. Additional factors may
21 be considered in the discretion of the commissioner.

22 (3) A list of qualified jurisdictions shall be
23 published through the National Associations of Insurance
24 Commissioners committee process. The commissioner shall
25 consider this list in determining qualified jurisdictions. If
26 the commissioner approves a jurisdiction as qualified that

1 does not appear on the list of qualified jurisdictions, the
2 commissioner shall provide thoroughly documented justification
3 in accordance with criteria to be developed under regulations.

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

8 (5) If a certified reinsurer's domiciliary
9 jurisdiction ceases to be a qualified jurisdiction, the
10 commissioner has the discretion to suspend the reinsurer's
11 certification indefinitely, in lieu of revocation.

12 (d) The commissioner shall assign a rating to each
13 certified reinsurer, giving due consideration to the financial
14 strength ratings that have been assigned by rating agencies
15 deemed acceptable by the commissioner pursuant to regulation.
16 The commissioner shall publish a list of all certified
17 reinsurers and their ratings.

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

22 (2) In order for a domestic ceding insurer to
23 qualify for full financial statement credit for reinsurance
24 ceded to a certified reinsurer, the certified reinsurer shall
25 maintain security in a form acceptable to the commissioner and
26 consistent with the provisions of Section 27-5B-14, or in a

1 multibeneficiary trust in accordance with Section 27-5B-7,
2 except as otherwise provided in this section.

3 (3) If a certified reinsurer maintains a trust to
4 fully secure its obligations subject to Section 27-5B-7, and
5 chooses to secure its obligations incurred as a certified
6 reinsurer in the form of a multibeneficiary trust, the
7 certified reinsurer shall maintain separate trust accounts for
8 its obligations incurred under reinsurance agreements issued
9 or renewed as a certified reinsurer with reduced security as
10 permitted by this section or comparable laws of other U.S.
11 jurisdictions and for its obligations subject to Section
12 27-5B-7. It shall be a condition to the grant of certification
13 under Section 27-5B-8 that the certified reinsurer shall have
14 bound itself, by the language of the trust and agreement with
15 the commissioner with principal regulatory oversight of each
16 such trust account, to fund, upon termination of any such
17 trust account, out of the remaining surplus of such trust any
18 deficiency of any other such trust account.

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

25 (5) With respect to obligations incurred by a
26 certified reinsurer under this section, if the security is

1 insufficient, the commissioner shall reduce the allowable
2 credit by an amount proportionate to the deficiency, and has
3 the discretion to impose further reductions in allowable
4 credit upon finding that there is a material risk that the
5 certified reinsurer's obligations will not be paid in full
6 when due.

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

11 b. As used in this section, the term "terminated"
12 refers to revocation, suspension, voluntary surrender and
13 inactive status.

14 c. If the commissioner continues to assign a higher
15 rating as permitted by other provisions of this chapter, this
16 requirement does not apply to a certified reinsurer in
17 inactive status or to a reinsurer whose certification has been
18 suspended.

19 (f) If an applicant for certification has been
20 certified as a reinsurer in an NAIC accredited jurisdiction,
21 the commissioner has the discretion to defer to that
22 jurisdiction's certification, and has the discretion to defer
23 to the rating assigned by that jurisdiction, and such assuming
24 insurer shall be considered to be a certified reinsurer in
25 this state.

1 (g) A certified reinsurer that ceases to assume new
2 business in this state may request to maintain its
3 certification in inactive status in order to continue to
4 qualify for a reduction in security for its in-force business.
5 An inactive certified reinsurer shall continue to comply with
6 all applicable requirements of this section, and the
7 commissioner shall assign a rating that takes into account, if
8 relevant, the reasons why the reinsurer is not assuming new
9 business.

10 §27-5B-9. Credit for reinsurance required by law.

11 Credit shall be allowed when the reinsurance is
12 ceded to an assuming insurer not meeting the requirements of
13 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, or 27-5B-8, but
14 only as to the insurance of risks located in jurisdictions
15 where the reinsurance is required by applicable law or
16 regulation of that jurisdiction.

17 §27-5B-10. Reinsurer not licensed, accredited or
18 certified - additional requirements.

19 (a) If the assuming insurer is not licensed,
20 accredited or certified to transact insurance or reinsurance
21 in this state, the credit permitted by Sections 27-5B-6 and
22 27-5B-7 shall not be allowed unless the assuming insurer
23 agrees in the reinsurance agreements:

24 (1) That in the event of the failure of the assuming
25 insurer to perform its obligations under the terms of the
26 reinsurance agreement, the assuming insurer, at the request of

1 the ceding insurer, shall submit to the jurisdiction of any
2 court of competent jurisdiction in any state of the United
3 States, will comply with all requirements necessary to give
4 the court jurisdiction, and will abide by the final decision
5 of the court or of any appellate court in the event of an
6 appeal.

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

11 (b) This section is not intended to conflict with or
12 override the obligation of the parties to a reinsurance
13 agreement to arbitrate their disputes, if this obligation is
14 created in the agreement.

15 §27-5B-11. Reinsurer not licensed or accredited or
16 subject to substantially similar laws - additional
17 requirements.

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

23 (1) Notwithstanding any other provisions in the
24 trust instrument, if the trust fund is inadequate because it
25 contains an amount less than the amount required by subsection
26 (c) of Section 27-5B-7, or if the grantor of the trust has

1 been declared insolvent or placed into receivership,
2 rehabilitation, liquidation or similar proceedings under the
3 laws of its state or country of domicile, the trustee shall
4 comply with an order of the commissioner with regulatory
5 oversight over the trust or with an order of a court of
6 competent jurisdiction directing the trustee to transfer to
7 the commissioner with regulatory oversight all of the assets
8 of the trust fund.

9 (2) The assets shall be distributed by and claims
10 shall be filed with and valued by the commissioner with
11 regulatory oversight in accordance with the laws of the state
12 in which the trust is domiciled that are applicable to the
13 liquidation of domestic insurance companies.

14 (3) If the commissioner with regulatory oversight
15 determines that the assets of the trust fund or any part
16 thereof are not necessary to satisfy the claims of the U.S.
17 ceding insurers of the grantor of the trust, the assets or
18 part thereof shall be returned by the commissioner with
19 regulatory oversight to the trustee for distribution in
20 accordance with the trust agreement.

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

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

1 (a) If an accredited or certified reinsurer ceases
2 to meet the requirements for accreditation or certification,
3 the commissioner may suspend or revoke the reinsurer's
4 accreditation or certification.

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

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

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

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

20 (c) While a reinsurer's accreditation or
21 certification is suspended, no reinsurance contract issued or
22 renewed after the effective date of the suspension qualifies
23 for credit except to the extent that the reinsurer's
24 obligations under the contract are secured in accordance with
25 Section 27-5B-14. If a reinsurer's accreditation or
26 certification is revoked, no credit for reinsurance may be

1 granted after the effective date of the revocation except to
2 the extent that the reinsurer's obligations under the contract
3 are secured in accordance with subsection (e) of Section
4 27-5B-8 or Section 27-5B-14.

5 §27-5B-13. Concentration Risk.

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

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

1 to exceed this limit. The notification shall demonstrate that
2 the exposure is safely managed by the domestic ceding insurer.

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

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

23 (1) Cash.

24 (2) Securities listed by the Securities Valuation
25 Office of the National Association of Insurance Commissioners,
26 including those deemed exempt from filing as defined by the

1 Purposes and Procedures Manual of the Securities Valuation
2 Office, and qualifying as admitted assets.

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

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

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

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

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

24 (1) Is organized or (in the case of a U.S. office of
25 a foreign banking organization) licensed, under the laws of
26 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

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

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

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

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

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

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

6 §27-5B-18. Notice by domiciliary liquidator.

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

26 §27-5B-19. Rules.

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

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