

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2343

By: Adkins

AS INTRODUCED

An Act relating to insurance; amending Section 35, Chapter 178, O.S.L. 1992, Section 36, Chapter 178, O.S.L. 1992, as last amended by Section 99, Chapter 418, O.S.L. 1997, Section 37, Chapter 178, O.S.L. 1992, as amended by Section 1, Chapter 52, O.S.L. 1995 and Section 39, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1999, Sections 5121, 5122, 5123 and 5125), which relate to the Credit for Reinsurance Act; stating purpose and legislative intent; modifying circumstances for which credit will be allowed for a domestic ceding insurer; requiring assuming insurers to submit to examination and pay expense of examination; providing requirements for assuming insurers; prohibiting credit for certain assuming insurers unless certain conditions are agreed to; defining term; providing scope of application of amendments; amending 36 O.S. 1991, Section 711, as amended by Section 3, Chapter 79, O.S.L. 1993 (36 O.S. Supp. 1999, Section 711), which relates to authorized reinsurance; modifying exception to prohibition against credit; authorizing certain provisions in reinsurance agreement; authorizing certain actions and expenses during pendency of certain claims; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 35, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1999, Section 5121), is amended to read as follows:

Section 5121. A. Sections ~~35~~ 5121 through ~~39~~ 5125 of this act title shall be known and may be cited as the "Credit for Reinsurance Act".

B. The purpose of the Credit for Reinsurance Act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. The Legislature hereby declares its intent is to ensure adequate protection for those parties to

whom insurers and reinsurers owe obligations. In furtherance of that state interest, the Legislature hereby provides a mandate that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its obligations within the United States in accordance with the Credit for Reinsurance Act, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in the Credit for Reinsurance Act are fundamental to the business of insurance in accordance with 15 U.S.C., Sections 1011 through 1012.

SECTION 2. AMENDATORY Section 36, Chapter 178, O.S.L. 1992, as last amended by Section 99, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1999, Section 5122), is amended to read as follows:

Section 5122. A. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a ~~deduction~~ reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection B, C, D, E or F of this section. ~~If meeting the requirements of subsection D or E of this section, the requirements of subsection G of this section must also be met.~~ Credit shall be allowed under subsection B, C or D of this section only as respects cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is licensed to transact insurance or reinsurance. Credit shall be allowed under subsection D or E of this section only if the applicable requirements of subsection G have been satisfied.

B. Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that is licensed to transact insurance or reinsurance in this state.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that is accredited as a reinsurer in this state. An accredited reinsurer is one ~~which~~ that:

1. Files with the Insurance Commissioner evidence of its submission to this state's jurisdiction;

2. Submits to this state's authority to examine its books and records;

3. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; and

4. Files annually with the Insurance Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement, and either:

a. maintains a surplus as regards policyholders in an amount which is not less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has not been denied by the Insurance Commissioner within ninety (90) days of its submission, or

b. maintains a surplus as regards policyholders in an amount less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has been approved by the Insurance Commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Insurance Commissioner after notice and opportunity for hearing.

D. Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that is domiciled ~~and licensed~~ in, or in the

case of a United States branch of an alien assuming insurer is entered through, a state ~~which~~ that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

1. Maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars (\$20,000,000.00); and

2. Submits to the authority of this state to examine its books and records.

~~Provided, however, that the~~ The requirement of paragraph 1 of this subsection does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

E. 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that maintains a trust fund in a qualified United States financial institution, as defined in ~~Section 5102 of this title~~ subsection J of this section, for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest. ~~The~~ To enable the Insurance Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the Insurance Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers ~~to enable the Insurance Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than Twenty Million Dollars (\$20,000,000.00). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account~~

~~representing the group's liabilities attributable to business written in the United States and, in addition:~~

- ~~a. the group shall maintain a trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group,~~
- ~~b. the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members, and~~
- ~~c. the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.~~

~~2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of Ten Billion Dollars (\$10,000,000,000.00), the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the~~

~~group shall make available to the Insurance Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.~~

~~3. Such trust shall be established in a form approved by the Insurance Commissioner.~~

2. Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by the Commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the Insurance Commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in ~~the its~~ trustees ~~of the trust~~ for ~~its~~ the benefit of the assuming insurer's United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Insurance Commissioner. The trust ~~described herein must~~ shall remain in effect for as long as the assuming insurer ~~shall have~~ has outstanding obligations due under the reinsurance agreements subject to the trust.

~~4.~~ 3. No later than March 1 of each year the trustees of the trust shall report to the Insurance Commissioner in writing ~~setting forth~~ the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

4. The following requirements apply to the following categories of assuming insurer;

- a. the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than Twenty Thousand Dollars (\$20,000.00),
- b. (1) in the case of a group including incorporated and individual unincorporated underwriters:
  - (a) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United-States-domiciled ceding insurers to any member of the group,
  - (b) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this act, the trust shall consist of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States, and
  - (c) in addition to these trusts, the group shall maintain in trust a trustee surplus of which One Hundred Million Dollars

(\$100,000,000.00) shall be held jointly for the benefit of the United-States-domiciled ceding insurers of any member of the group for all years of account,

(2) the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members, and

(3) within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group, and

c. in the case of a group of incorporated underwriters under common administration, the group shall:

(1) have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation,

(2) maintain aggregate policyholders' surplus of at least Ten Billion Dollars (\$10,000,000,000.00),

(3) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United-States-domiciled ceding insurers to any member of the group pursuant to

reinsurance contracts issued in the name of the group,

- (4) in addition, maintain a joint trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United-States-domiciled ceding insurers of any member of the group as additional security for these liabilities, and
- (5) within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

F. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of ~~subsections~~ subsection B, C, D or E of this section but only ~~with respect to~~ as the insurance of risks located in jurisdictions where ~~such~~ the reinsurance is required by applicable law or regulation of that jurisdiction.

G. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections D and E of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all

requirements necessary to give ~~such~~ the court jurisdiction, and will abide by the final decision of ~~such~~ the court or of any appellate court in the event of an appeal; and

2. To designate the Insurance Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

H. The provisions of this section are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if ~~such an~~ this obligation is created in the agreement.

I. If the assuming insurer does not meet the requirements of subsection B, C or D of this section, the credit permitted by subsection E of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph 4 of subsection E of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the Commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Commissioner with regulatory oversight all of the assets of the trust fund;

2. The assets shall be distributed by and claims shall be filed with and valued by the Commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

3. If the Commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the Commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

J. 1. For purposes of subsection E of this section, "qualified United States financial institution" means an institution that:

- a. is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof,
- b. is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies, and
- c. has been determined by either the Insurance Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

2. A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

- a. is organized or (in the case of a United States branch or agency office of a foreign banking organization) licensed under the laws of the United States or any

state thereof and has been granted authority to  
operate with fiduciary powers, and

b. is regulated, supervised and examined by federal or  
state authorities having regulatory authority over  
banks and trust companies.

SECTION 3. AMENDATORY Section 37, Chapter 178, O.S.L.  
1992, as amended by Section 1, Chapter 52, O.S.L. 1995 (36 O.S.  
Supp. 1999, Section 5123), is amended to read as follows:

Section 5123. A. ~~A~~ An asset of reduction from liability for  
the reinsurance ceded by a domestic insurer to an assuming insurer  
not meeting the requirements of Section 5122 of this title shall be  
allowed in an amount not exceeding the liabilities carried by the  
ceding insurer ~~and such.~~ The reduction shall be in the amount of  
funds held by or on behalf of the ceding insurer, including funds  
held in trust for the ceding insurer, under a reinsurance contract  
with such assuming insurer as security for the payment of  
obligations thereunder, if such security is held in the United  
States subject to withdrawal solely by, and under the exclusive  
control of, the ceding insurer; or, in the case of a trust, held in  
a qualified United States financial institution, as defined in  
Section ~~5102~~ 5122 of this title. This security may be in one or  
more of the following forms:

1. Cash;

2. Securities listed by the Securities Valuation Office of the  
National Association of Insurance Commissioners and qualifying as  
admitted assets; and

3. Any other form of security acceptable to the Insurance  
Commissioner.

B. 1. ~~A reduction from liability for the reinsurance ceded by  
a domestic insurer pursuant to the provisions of this section shall  
be allowed for security in the form of clean~~ Clean, irrevocable,  
unconditional letters of credit, issued or confirmed by a qualified

United States financial institution, as defined ~~herein~~ in paragraph 1 of subsection J of Section 5122 of this title, no later than December 31 ~~in respect~~ of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. ~~Provided, for purposes of regulating domestic insurers in this state, the ceding insurer shall make a supplemental filing to the annual statement which restates the insurer's liability and surplus requirements as if no reduction were allowed pursuant to this subsection.~~

2. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

~~3. For purposes of this subsection, "qualified United States financial institution" means an institution that:~~

- ~~a. is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof,~~
- ~~b. is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies, and~~
- ~~c. has been determined by either the Insurance Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.~~

SECTION 4. AMENDATORY Section 39, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1999, Section 5125), is amended to read as follows:

Section 5125. A. The Credit for Reinsurance Act shall apply to all cessions on and after September 1, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after September 1, 1992.

B. The amendments to the Credit for Reinsurance Act provided for in this act shall apply to all cessions on and after November 1, 2000, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after November 1, 2000.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 711, as amended by Section 3, Chapter 79, O.S.L. 1993 (36 O.S. Supp. 1999, Section 711), is amended to read as follows:

Section 711. A. 1. No credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance nor increase the amount it is authorized to have at risk unless the reinsurance ~~is~~ contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract or contracts reinsured by the assuming insurer on the basis of ~~the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer~~ reported claims allowed by the liquidation except:

- a. if the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or
- b. if the assuming insurer, with the consent of all direct insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the

assuming insurer to the payees under such policies and  
in substitution for the obligations of the ceding  
insurer to such payees.

2. The reinsurance agreement may provide that the domiciliary  
liquidator of an insolvent ceding insurer shall give written notice  
to the assuming insurer of the pendency of a claim against such  
ceding insurer on the contract reinsured within a reasonable time  
after such claim is filed in the liquidation proceeding. During the  
pendency of such claim, any assuming insurer may investigate such  
claim and interpose, at its own expense, in the proceeding where  
such claim is to be adjudicated, any defenses which it deems  
available to the ceding insurer, or its liquidator. Such expense  
may be filed as a claim against the insolvent ceding insurer to the  
extent to a proportionate share of the benefit which may accrue to  
the ceding insurer solely as a result of the defense undertaken by  
the assuming insurer. If two or more assuming insurers are involved  
in the same claim and a majority in interest elect to interpose one  
or more defenses to such claim, the expense shall be apportioned in  
accordance with the terms of the reinsurance agreement as though  
such expense had been incurred by the ceding insurer.

B. This section shall not apply to insurance of ocean marine risks or marine protection and indemnity risks.

SECTION 6. This act shall become effective November 1, 2000.

47-2-7797            SD            6/12/15