

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 122

By: Montgomery of the Senate

and

Sims of the House

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10 An Act relating to reinsurance; amending 36 O.S.
11 2011, Sections 5122 and 5124, as amended by Sections
12 1 and 4, Chapter 298, O.S.L. 2016 (36 O.S. Supp.
13 2020, Sections 5122 and 5124), which relate to
14 requirements for allowance of credit and rules and
15 regulations; conforming language; authorizing credit
16 for reinsurance when reinsurance is ceded to certain
17 assuming insurers; establishing requirements of
18 assuming insurers; providing definitions; requiring
19 assuming insurer to have and maintain certain
20 financial assets; requiring assuming insurer to
21 provide certain notification; requiring assuming
22 insurer to submit to certain jurisdiction and to pay
23 all final judgments; requiring reinsurance agreements
24 to contain certain security provision; requiring
 assuming insurer to agree to certain terms; requiring
 assuming insurer to provide any document requested by
 Insurance Commissioner; requiring the assuming
 insurer to make certain payments; requiring certain
 entity to confirm certain information reported to
 reciprocal jurisdiction; construing clause; requiring
 Commissioner to create and publish list of reciprocal
 jurisdiction; establishing terms of list of
 reciprocal jurisdiction; requiring Commissioner to
 create and publish list of certain assuming insurers;
 establishing terms of revoking eligibility from list;
 limiting credit for reinsurance available under this
 act; authorizing ceding insurer to obtain certain
 legal order; stating application of act; updating

1 references; adding exception to regulation for
2 certain insurers; and providing an effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 36 O.S. 2011, Section 5122, as
6 amended by Section 1, Chapter 298, O.S.L. 2016 (36 O.S. Supp. 2020,
7 Section 5122), is amended to read as follows:

8 Section 5122. A. Credit for reinsurance shall be allowed a
9 domestic ceding insurer as either an asset or a reduction from
10 liability on account of reinsurance ceded only when the reinsurer
11 meets the requirements of subsection B, C, D, E, F ~~or~~, G or H of
12 this section; provided, further, that the Commissioner may adopt by
13 regulation pursuant to subsection B of Section 5124 of this title,
14 specific additional requirements relating to or setting forth the
15 valuation of assets or reserve credits, the amount and forms of
16 security supporting reinsurance arrangements described in subsection
17 B of Section 5124 of this title and the circumstances pursuant to
18 which credit will be reduced or eliminated. Credit shall be allowed
19 under subsection B, C or D of this section only as respects cessions
20 of those kinds or classes of business in which the assuming insurer
21 is licensed or otherwise permitted to write or assume in its state
22 of domicile or, in the case of a United States branch of an alien
23 assuming insurer, in the state through which it is entered and
24 licensed to transact insurance or reinsurance. Credit shall be

1 allowed under subsection D or E of this section only if the
2 applicable requirements of subsection ~~H~~ I have been satisfied.

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

6 C. Credit shall be allowed when the reinsurance is ceded to an
7 assuming insurer that is accredited by the Insurance Commissioner as
8 a reinsurer in this state. An accredited reinsurer is one that:

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

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

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

17 4. Files annually with the Insurance Commissioner a copy of its
18 annual statement filed with the insurance department of its state of
19 domicile and a copy of its most recent audited financial statement;
20 and

21 5. Demonstrates to the satisfaction of the Insurance
22 Commissioner that it has adequate financial capacity to meet its
23 reinsurance obligations and is otherwise qualified to assume
24 reinsurance from domestic insurers. An assuming insurer is deemed

1 to meet this requirement as of the time of its application if it
2 maintains a surplus as regards policyholders in an amount not less
3 than Twenty Million Dollars (\$20,000,000.00) and its accreditation
4 has not been denied by the Insurance Commissioner within ninety (90)
5 days after submission of its application.

6 D. Credit shall be allowed when the reinsurance is ceded to an
7 assuming insurer that is domiciled in, or in the case of a United
8 States branch of an alien assuming insurer is entered through, a
9 state that employs standards regarding credit for reinsurance
10 substantially similar to those applicable under this statute and the
11 assuming insurer or United States branch of an alien assuming
12 insurer:

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

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

17 The requirement of paragraph 1 of this subsection does not apply
18 to reinsurance ceded and assumed pursuant to pooling arrangements
19 among insurers in the same holding company system.

20 E. 1. Credit shall be allowed when the reinsurance is ceded to
21 an assuming insurer that maintains a trust fund in a qualified
22 United States financial institution, as defined in Section ~~3 of this~~
23 ~~act~~ 5123.1 of this title, for the payment of the valid claims of its
24 United States ceding insurers, their assigns and successors in

1 interest. To enable the Insurance Commissioner to determine the
2 sufficiency of the trust fund, the assuming insurer shall report
3 annually to the Insurance Commissioner information substantially the
4 same as that required to be reported on the National Association of
5 Insurance Commissioners Annual Statement form by licensed insurers.
6 The assuming insurer shall submit to examination of its books and
7 records by the Commissioner and bear the expense of examination.

8 2. Credit for reinsurance shall not be granted under this
9 subsection unless the form of the trust and any amendments to the
10 trust have been approved by:

11 a. the Commissioner of the state where the trust is
12 domiciled, or

13 b. the Commissioner of another state who, pursuant to the
14 terms of the trust instrument, has accepted principal
15 regulatory oversight of the trust.

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

1 successors in interest. The trust and the assuming insurer shall be
2 subject to examination as determined by the Insurance Commissioner.

3 4. The trust shall remain in effect for as long as the assuming
4 insurer has outstanding obligations due under the reinsurance
5 agreements subject to the trust.

6 5. No later than February 28 of each year the trustee of the
7 trust shall report to the Insurance Commissioner in writing the
8 balance of the trust and listing the trust's investments at the
9 preceding year end and shall certify the date of termination of the
10 trust, if so planned, or certify that the trust shall not expire
11 prior to the following December 31.

12 6. The following requirements apply to the following categories
13 of assuming insurer:

14 a. the trust fund for a single assuming insurer shall
15 consist of funds in trust in an amount not less than
16 the assuming insurer's liabilities attributable to
17 reinsurance ceded by United States ceding insurers,
18 and, in addition, the assuming insurer shall maintain
19 a trusted surplus of not less than Twenty Million
20 Dollars (\$20,000,000.00), except as provided in
21 subparagraph b of this paragraph,

22 b. at any time after the assuming insurer has permanently
23 discontinued underwriting new business secured by the
24 trust for at least three (3) full years, the

Commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus shall not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust,

c. (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 January 1, 1993,

1 the trust shall consist of a trustee
2 account in an amount not less than the
3 respective underwriters' several liabilities
4 attributable to business ceded by United
5 States-domiciled ceding insurers to any
6 underwriter of the group,

7 (b) for reinsurance ceded under reinsurance
8 agreements with an inception date on or
9 before December 31, 1992, and not amended or
10 renewed after that date, notwithstanding the
11 other provisions of ~~this act~~ the Credit for
12 Reinsurance Act, the trust shall consist of
13 a trustee account in an amount not less
14 than the respective underwriters' several
15 insurance and reinsurance liabilities
16 attributable to business written in the
17 United States, and

18 (c) in addition to these trusts, the group shall
19 maintain in trust a trustee surplus of
20 which One Hundred Million Dollars
21 (\$100,000,000.00) shall be held jointly for
22 the benefit of the United States-domiciled
23 ceding insurers of any member of the group
24 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
- d. 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),

- 1 (3) maintain a trust fund in an amount not less than
2 the group's several liabilities attributable to
3 business ceded by United States-domiciled ceding
4 insurers to any member of the group pursuant to
5 reinsurance contracts issued in the name of the
6 group,
- 7 (4) in addition, maintain a joint trustee surplus of
8 which One Hundred Million Dollars
9 (\$100,000,000.00) shall be held jointly for the
10 benefit of United States-domiciled ceding
11 insurers of any member of the group as additional
12 security for these liabilities, and
- 13 (5) within ninety (90) days after its financial
14 statements are due to be filed with the group's
15 domiciliary regulator, make available to the
16 Commissioner an annual certification of each
17 underwriter member's solvency by the member's
18 domiciliary regulator and financial statements of
19 each underwriter member of the group prepared by
20 its independent public accountant.

21 F. Credit shall be allowed when the reinsurance is ceded to an
22 assuming insurer that has been certified by the Commissioner as a
23 reinsurer in this state and secures its obligations in accordance
24 with the requirements of this subsection.

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

3 a. the assuming insurer shall be domiciled and licensed
4 to transact insurance or reinsurance in a qualified
5 jurisdiction, as determined by the Commissioner
6 pursuant to paragraph 3 of this subsection,

7 b. the assuming insurer shall maintain minimum capital
8 and surplus, or its equivalent, in an amount to be
9 determined by the Commissioner pursuant to regulation,

10 c. the assuming insurer shall maintain financial strength
11 ratings from two or more rating agencies deemed
12 acceptable by the Commissioner pursuant to regulation,

13 d. the assuming insurer shall agree to submit to the
14 jurisdiction of this state, appoint the Commissioner
15 as its agent for service of process in this state and
16 agree to provide security for one hundred percent
17 (100%) of the assuming insurer's liabilities
18 attributable to reinsurance ceded by United States
19 ceding insurers if it resists enforcement of a final
20 United States judgment,

21 e. the assuming insurer shall agree to meet applicable
22 information filing requirements as determined by the
23 Commissioner, both with respect to an initial
24

1 application for certification and on an ongoing basis,
2 and

3 f. the assuming insurer shall satisfy any other
4 requirements for certification deemed relevant by the
5 Commissioner.

6 2. An association, including incorporated and individual
7 unincorporated underwriters, may be a certified reinsurer. In order
8 to be eligible for certification, in addition to satisfying
9 requirements of paragraph 1 of this subsection:

10 a. the association shall satisfy its minimum capital and
11 surplus requirements through the capital and surplus
12 equivalents (net of liabilities) of the association
13 and its members, which shall include a joint central
14 fund that may be applied to any unsatisfied obligation
15 of the association or any of its members, in an amount
16 determined by the Commissioner to provide adequate
17 protection,

18 b. the incorporated members of the association shall not
19 be engaged in any business other than underwriting as
20 a member of the association and shall be subject to
21 the same level of regulation and solvency control by
22 the association's domiciliary regulator as are the
23 unincorporated members, and
24

1 c. within ninety (90) days after its financial statements
2 are due to be filed with the association's domiciliary
3 regulator, the association shall provide to the
4 Commissioner an annual certification by the
5 association's domiciliary regulator of the solvency of
6 each underwriter member; or if a certification is
7 unavailable, financial statements, prepared by
8 independent public accountants, of each underwriter
9 member of the association.

10 3. The Commissioner shall create and publish a list of
11 qualified jurisdictions under which an assuming insurer licensed and
12 domiciled in such jurisdiction is eligible to be considered for
13 certification by the Commissioner as a certified reinsurer.

14 a. In order to determine whether the domiciliary
15 jurisdiction of a non-United-States assuming insurer
16 is eligible to be recognized as a qualified
17 jurisdiction, the Commissioner shall evaluate the
18 appropriateness and effectiveness of the reinsurance
19 supervisory system of the jurisdiction, both initially
20 and on an ongoing basis, and consider the rights,
21 benefits and the extent of reciprocal recognition
22 afforded by the non-United-States jurisdiction to
23 reinsurers licensed and domiciled in the United
24 States. A qualified jurisdiction shall agree to share

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

10 b. A list of qualified jurisdictions shall be published
11 through the ~~NAIC~~ National Association of Insurance
12 Commissioners (NAIC) Committee Process. The
13 Commissioner shall consider this list in determining
14 qualified jurisdictions. If the Commissioner approves
15 a jurisdiction as qualified that does not appear on
16 the list of qualified jurisdictions, the Commissioner
17 shall provide thoroughly documented justification in
18 accordance with criteria to be developed under
19 regulations.

20 c. United States jurisdictions that meet the requirement
21 for accreditation under the NAIC financial standards
22 and accreditation program shall be recognized as
23 qualified jurisdictions.
24

1 d. If a certified reinsurer's domiciliary jurisdiction
2 ceases to be a qualified jurisdiction, the
3 Commissioner may at his or her discretion suspend the
4 reinsurer's certification indefinitely, in lieu of
5 revocation.

6 4. The Commissioner shall assign a rating to each certified
7 reinsurer, giving due consideration to the financial strength
8 ratings that have been assigned by rating agencies deemed acceptable
9 to the Commissioner pursuant to regulation. The Commissioner shall
10 publish a list of all certified reinsurers and their ratings.

11 5. A certified reinsurer shall secure obligations assumed from
12 United States ceding insurers under this subsection at a level
13 consistent with its rating, as specified in regulations promulgated
14 by the Commissioner.

15 a. In order for a domestic ceding insurer to qualify for
16 full financial statement credit for reinsurance ceded
17 to a certified reinsurer, the certified reinsurer
18 shall maintain security in a form acceptable to the
19 Commissioner and consistent with the provisions of
20 Section 5123 of this title, or in a multibeneficiary
21 trust in accordance with subsection E of this section,
22 except as otherwise provided in this subsection.

23 b. If a certified reinsurer maintains a trust to fully
24 secure its obligations subject to subsection E of this

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

- 18 c. The minimum trustee surplus requirements provided in
19 subsection E of this section are not applicable with
20 respect to a multibeneficiary trust maintained by a
21 certified reinsurer for the purpose of securing
22 obligations incurred under this subsection, except
23 that such trust shall maintain a minimum trustee
24 surplus of Ten Million Dollars (\$10,000,000.00).

1 d. With respect to obligations incurred by a certified
2 reinsurer under this subsection, if the security is
3 insufficient, the Commissioner shall reduce the
4 allowable credit by an amount proportionate to the
5 deficiency, and may at his or her discretion impose
6 further reductions in allowable credit upon finding
7 that there is a material risk that the certified
8 reinsurer's obligations will not be paid in full when
9 due.

10 6. If an applicant for certification has been certified as a
11 reinsurer in an NAIC-accredited jurisdiction, the Commissioner may
12 at his or her discretion defer to that jurisdiction's certification,
13 and may in his or her discretion defer to the rating assigned by
14 that jurisdiction, and such assuming insurer shall be considered to
15 be a certified reinsurer in this state.

16 7. A certified reinsurer that ceases to assume new business in
17 this state may request to maintain its certification in inactive
18 status in order to continue to qualify for a reduction in security
19 for its in-force business. An inactive certified reinsurer shall
20 continue to comply with all applicable requirements of this
21 subsection, and the Commissioner shall assign a rating that takes
22 into account, if relevant, the reasons why the reinsurer is not
23 assuming new business.

24 8. For purposes of this subsection:

- 1 a. a certified reinsurer whose certification has been
2 terminated for any reason shall be treated as a
3 certified reinsurer required to secure one hundred
4 percent (100%) of its obligations, and
5 b. the term "terminated" refers to revocation,
6 suspension, voluntary surrender and inactive status.
7 If the Commissioner continues to assign a higher
8 rating as permitted by this section, the requirement
9 to secure one hundred percent (100%) of its
10 obligations shall not apply to a certified reinsurer
11 in inactive status or to a reinsurer whose
12 certification has been suspended.

13 G. 1. Credit shall be allowed when the reinsurance is ceded to
14 an assuming insurer meeting all of the following conditions:

- 15 a. the assuming insurer shall have its head office or be
16 domiciled, as applicable, and licensed in a reciprocal
17 jurisdiction. For purposes of this subparagraph,
18 "reciprocal jurisdiction" is a jurisdiction that is
19 one of the following:

- 20 (1) a non-United States jurisdiction that is subject
21 to an in-force, covered agreement with the United
22 States, each within its legal authority, or, in
23 the case of a covered agreement between the
24 United States and the European Union, is a member

1 state of the European Union. For purposes of
2 this subparagraph, a "covered agreement" is an
3 agreement entered into pursuant to Dodd-Frank
4 Wall Street Reform and Consumer Protection Act,
5 31 U.S.C. Sections 313 and 314, that is currently
6 in effect or in a period of provisional
7 application and addresses the elimination, under
8 specified conditions, of collateral requirements
9 as a condition for entering into any reinsurance
10 agreement with a ceding insurer domiciled in this
11 state or for allowing the ceding insurer to
12 recognize credit for reinsurance,

13 (2) a United States jurisdiction that meets the
14 requirements for accreditation under the National
15 Association of Insurance Commissioners financial
16 standards and accreditation program, or

17 (3) a qualified jurisdiction, as determined by the
18 Commissioner pursuant to subparagraph a of
19 paragraph 3 of subsection F of this section, that
20 is not otherwise described in division 1 or 2 of
21 subparagraph a of paragraph 1 of this subsection
22 and meets additional requirements consistent with
23 the terms and conditions of in-force, covered
24

1 agreements, as specified by the Commissioner in
2 rules,

3 b. the assuming insurer shall have and maintain, on an
4 ongoing basis, minimum capital and surplus, or its
5 equivalent, calculated according to the methodology of
6 its domiciliary jurisdiction, in an amount to be set
7 forth in Insurance Department rules. If the assuming
8 insurer is an association including incorporated and
9 individual unincorporated underwriters, it shall have
10 and maintain, on an ongoing basis, minimum capital and
11 surplus equivalents (net of liabilities), calculated
12 according to the methodology applicable in its
13 domiciliary jurisdiction, and a central fund
14 containing a balance in amounts to be set forth in
15 Department rules,

16 c. the assuming insurer shall have and maintain, on an
17 ongoing basis, a minimum solvency or capital ratio, as
18 applicable, which will be set forth in Department
19 rules. If the assuming insurer is an association
20 including incorporated and individual unincorporated
21 underwriters, it shall have and maintain, on an
22 ongoing basis, a minimum solvency or capital ratio in
23 the reciprocal jurisdiction where the assuming insurer

1 has its head office or is domiciled and is also
2 licensed,

3 d. the assuming insurer shall agree and provide adequate
4 assurance to the Insurance Commissioner, in a form
5 specified by the Commissioner, as follows:

6 (1) the assuming insurer shall provide prompt written
7 notice and explanation to the Commissioner if it
8 falls below the minimum requirements set forth in
9 subparagraph b or c of this paragraph, or if any
10 regulatory action is taken against it for serious
11 noncompliance with applicable law,

12 (2) the assuming insurer shall consent in writing to
13 the jurisdiction of the courts of this state and
14 to the appointment of the Commissioner as agent
15 for service of process. The Commissioner may
16 require that consent for service of process be
17 provided to the Commissioner and included in each
18 reinsurance agreement. Nothing in this provision
19 shall be construed to limit, or in any way alter,
20 the capacity of parties to a reinsurance
21 agreement to agree to alternative dispute
22 resolution mechanisms, except to the extent such
23 agreements are unenforceable under applicable
24 insolvency or delinquency laws,

- 1 (3) the assuming insurer shall consent in writing to
2 pay all final judgments, wherever enforcement is
3 sought, obtained by a ceding insurer or its legal
4 successor, that have been declared enforceable in
5 the jurisdiction where the judgment was obtained,
- 6 (4) each reinsurance agreement shall include a
7 provision requiring the assuming insurer to
8 provide security in an amount equal to one
9 hundred percent (100%) of the liabilities of the
10 assuming insurer attributable to reinsurance
11 ceded pursuant to that agreement if the assuming
12 insurer resists enforcement of a final judgment
13 that is enforceable under the law of the
14 jurisdiction in which it was obtained or a
15 properly enforceable arbitration award, whether
16 obtained by the ceding insurer or by its legal
17 successor on behalf of its resolution estate, and
- 18 (5) the assuming insurer shall confirm that it is not
19 presently participating in any solvent scheme of
20 arrangement that involves the ceding insurers of
21 this state, and agree to notify the ceding
22 insurer and the Commissioner and to provide
23 security in an amount equal to one hundred
24 percent (100%) of the liabilities of the assuming

1 insurer to the ceding insurer, should the
2 assuming insurer enter into such a solvent scheme
3 of arrangement. The security shall be in a form
4 consistent with the provisions of subsection H of
5 Section 5122 and Section 5123 of this title,
6 specified by the Commissioner in rule,

7 e. the assuming insurer or its legal successor shall
8 provide, on behalf of itself and any legal
9 predecessors, any additional documentation requested
10 by the Commissioner in regulation,

11 f. the assuming insurer shall maintain a practice of
12 prompt payment of claims under reinsurance agreements,
13 pursuant to criteria set forth in rule,

14 g. the supervisory authority of the assuming insurer
15 shall confirm to the Commissioner on an annual basis,
16 as of the preceding December 31 or at the annual date
17 otherwise statutorily reported to the reciprocal
18 jurisdiction, that the assuming insurer complies with
19 the requirements set forth in subparagraphs b and c of
20 this paragraph, and

21 h. nothing in this provision shall be construed to
22 preclude an assuming insurer from providing the
23 Commissioner with information on a voluntary basis.
24

1 2. The Commissioner shall timely create and publish a list of
2 reciprocal jurisdictions.

3 a. A list of reciprocal jurisdictions is published
4 through the National Association of Insurance
5 Commissioners Committee Process. The list shall
6 include any reciprocal jurisdiction as defined under
7 subparagraph a of paragraph 1 of this subsection and
8 shall consider any other reciprocal jurisdiction
9 included on the National Association of Insurance
10 Commissioners list. The Commissioner may approve a
11 jurisdiction that does not appear on the list of
12 reciprocal jurisdictions in accordance with criteria
13 to be developed through rules issued by the
14 Commissioner.

15 b. The Commissioner may remove a jurisdiction from the
16 list of reciprocal jurisdictions upon a determination
17 that the jurisdiction no longer meets the requirements
18 of a reciprocal jurisdiction, in accordance with a
19 process set forth in rules issued by the Commissioner,
20 except that the Commissioner shall not remove from the
21 list a reciprocal jurisdiction as defined under
22 subparagraph a of paragraph 1 of this subsection.
23 Upon removal of a reciprocal jurisdiction from this
24 list, credit for reinsurance ceded to an assuming

1 insurer that has its home office or is domiciled in
2 that jurisdiction shall be allowed, if otherwise
3 allowed pursuant to this act.

4 3. The Commissioner shall timely create and publish a list of
5 assuming insurers that have satisfied the conditions set forth in
6 this subsection and to which cessions shall be granted credit in
7 accordance with this subsection. The Commissioner may add an
8 assuming insurer to such list if a National Association of Insurance
9 Commissioners accredited jurisdiction has added the assuming insurer
10 to a list of such assuming insurers or if, upon initial eligibility,
11 the assuming insurer submits the information to the Commissioner as
12 required under subparagraph d of paragraph 1 of this subsection and
13 complies with any additional requirements that the Commissioner may
14 impose by regulation, except to the extent that they conflict with
15 an applicable covered agreement.

16 4. If the Commissioner determines that an assuming insurer no
17 longer meets one or more of the requirements under this subsection,
18 the Commissioner may revoke or suspend the eligibility of the
19 assuming insurer for recognition under this subsection in accordance
20 with procedures set forth in Department rules.

21 a. While the eligibility of an assuming insurer is
22 suspended, no reinsurance agreement issued, amended or
23 renewed after the effective date of the suspension
24 qualifies for credit except to the extent that the

1 obligations of the assuming insurer under the contract
2 are secured in accordance with the provisions of
3 Section 5123 of this title.

4 b. If the eligibility of an assuming insurer is revoked,
5 no credit for reinsurance may be granted after the
6 effective date of the revocation with respect to any
7 reinsurance agreements entered into by the assuming
8 insurer including reinsurance agreements entered into
9 prior to the date of revocation, except to the extent
10 that the obligations of the assuming insurer under the
11 contract are secured in a form acceptable to the
12 Commissioner.

13 5. If subject to a legal process of rehabilitation, liquidation
14 or conservation, as applicable, the ceding insurer or its
15 representative may seek and, if determined appropriate by the court
16 in which the proceedings are pending, may obtain an order requiring
17 that the assuming insurer post security for all outstanding ceded
18 liabilities.

19 6. Nothing in this subsection shall be construed to limit or in
20 any way alter the capacity of parties to a reinsurance agreement to
21 agree on requirements for security or other terms in that
22 reinsurance agreement, except as expressly prohibited by this act or
23 other applicable law or rule.

1 7. Credit may be taken under this subsection only for
2 reinsurance agreements entered into, amended or renewed on or after
3 the effective date of this act, and only with respect to losses
4 incurred and reserves reported on or after the later of (1) the date
5 on which the assuming insurer has met all eligibility requirements
6 pursuant to paragraph 1 of this subsection, and (2) the effective
7 date of the new reinsurance agreement, amendment or renewal.

8 a. This paragraph does not alter or impair the right of a
9 ceding insurer to take credit for reinsurance, to the
10 extent that credit is not available under this
11 subsection, as long as the reinsurance qualifies for
12 credit under any other applicable provision of this
13 act.

14 b. Nothing in this subsection shall be construed to
15 authorize an assuming insurer to withdraw or reduce
16 the security provided under any reinsurance agreement,
17 except as permitted by the terms of the agreement.

18 c. Nothing in this subsection shall be construed to
19 limit, or in any way alter, the capacity of parties to
20 any reinsurance agreement to renegotiate the
21 agreement.

22 H. Credit shall be allowed when the reinsurance is ceded to an
23 assuming insurer not meeting the requirements of subsection B, C, D,
24 ~~E or F,~~ F or G of this section but only as the insurance of risks

1 located in jurisdictions where the reinsurance is required by
2 applicable law or regulation of that jurisdiction.

3 ~~H.~~ I. If the assuming insurer is not licensed, accredited or
4 certified to transact insurance or reinsurance in this state, the
5 credit permitted by subsections D and E of this section shall not be
6 allowed unless the assuming insurer agrees in the reinsurance
7 agreements:

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

16 2. To designate the Insurance Commissioner or a designated
17 attorney as its true and lawful attorney upon whom may be served any
18 lawful process in any action, suit or proceeding instituted by or on
19 behalf of the ceding insurer. This subsection is not intended to
20 conflict with or override the obligation of the parties to a
21 reinsurance agreement to arbitrate their disputes, if this
22 obligation is created in the agreement.

23 ~~F.~~ J. If the assuming insurer does not meet the requirements of
24 subsection B, C or D of this section, the credit permitted by

1 subsection E or F of this section shall not be allowed unless the
2 assuming insurer agrees in the trust agreements to the following
3 conditions:

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

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

20 3. If the Commissioner with regulatory oversight determines
21 that the assets of the trust fund or any part thereof are not
22 necessary to satisfy the claims of the United States ceding insurers
23 of the grantor of the trust, the assets or part thereof shall be
24

1 returned by the Commissioner with regulatory oversight to the
2 trustee for distribution in accordance with the trust agreement; and

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

5 ~~J.~~ K. If an accredited or certified reinsurer ceases to meet
6 the requirements for accreditation or certification, the
7 Commissioner may suspend or revoke the reinsurer's accreditation or
8 certification.

9 1. The Commissioner shall give the reinsurer notice and
10 opportunity for hearing. The suspension or revocation shall not
11 take effect until after the Commissioner's order on hearing, unless:

12 a. the reinsurer waives its right to hearing,

13 b. the Commissioner's order is based on regulatory action
14 by the reinsurer's domiciliary jurisdiction or the
15 voluntary surrender or termination of the reinsurer's
16 eligibility to transact insurance or reinsurance
17 business in its domiciliary jurisdiction or in the
18 primary certifying state of the reinsurer under
19 paragraph 6 of subsection F of this section, or

20 c. the Commissioner finds that an emergency requires
21 immediate action and a court of competent jurisdiction
22 has not stayed the Commissioner's action;

23 2. While a reinsurer's accreditation or certification is
24 suspended, no reinsurance contract issued or renewed after the

1 effective date of the suspension qualifies for credit except to the
2 extent that the reinsurer's obligations under the contract are
3 secured in accordance with Section 5123 of this title. If a
4 reinsurer's accreditation or certification is revoked, no credit for
5 reinsurance shall be granted after the effective date of the
6 revocation except to the extent that the reinsurer's obligations
7 under the contract are secured in accordance with paragraph 5 of
8 subsection F of this section or Section 5123 of this title.

9 ~~K.~~ L. Concentration Risk.

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

21 2. A ceding insurer shall take steps to diversify its
22 reinsurance program. A domestic ceding insurer shall notify the
23 Commissioner within thirty (30) days after ceding to any single
24 assuming insurer, or group of affiliated assuming insurers, more

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

7 SECTION 2. AMENDATORY 36 O.S. 2011, Section 5124, as
8 amended by Section 4, Chapter 298, O.S.L. 2016 (36 O.S. Supp. 2020,
9 Section 5124), is amended to read as follows:

10 Section 5124. A. The Insurance Commissioner may promulgate and
11 adopt rules and regulations implementing the provisions of the
12 Credit for Reinsurance Act.

13 B. The Insurance Commissioner is further authorized to adopt
14 rules and regulations applicable to reinsurance arrangements
15 described in paragraph 1 of this subsection.

16 1. A regulation adopted pursuant to this subsection may apply
17 only to reinsurance relating to:

- 18 a. life insurance policies with guaranteed nonlevel gross
19 premiums or guaranteed nonlevel benefits,
- 20 b. universal life insurance policies with provisions
21 resulting in the ability of a policyholder to keep a
22 policy in force over a secondary guarantee period,
- 23 c. variable annuities with guaranteed death or living
24 benefits,

- 1 d. long-term care insurance policies, or
- 2 e. such other life and health insurance and annuity
- 3 products as to which the ~~NAIC~~ National Association of
- 4 Insurance Commissioners (NAIC) adopts model regulatory
- 5 requirements with respect to credit for reinsurance.

6 2. A regulation adopted pursuant to this subsection which is

7 applicable to policies listed in subparagraph a or b of paragraph 1

8 of this subsection may apply to any treaty containing:

- 9 a. policies issued on or after January 1, 2015, and
- 10 b. policies issued prior to January 1, 2015, if risk
- 11 pertaining to such pre-2015 policies is ceded in
- 12 connection with the treaty, in whole or in part, on or
- 13 after January 1, 2015, unless the NAIC Accounting
- 14 Practices and Procedures Manual in effect as of
- 15 December 31, 2015, excluded such pre-2015 policies
- 16 from the requirements concerning the amounts and forms
- 17 of security supporting reinsurance arrangements that
- 18 would otherwise be applicable to such policies.

19 3. A regulation adopted pursuant to this subsection may require

20 the ceding insurer, in calculating the amounts or forms of security

21 required to be held under regulations promulgated under this

22 authority, to use the Valuation Manual adopted by the NAIC under

23 Section 11B (1) of the NAIC Standard Valuation Law, including all

24

1 amendments adopted by the NAIC and in effect on the date as of which
2 the calculation is made, to the extent applicable.

3 4. A regulation adopted pursuant to this subsection shall not
4 apply to cessions to an assuming insurer that:

5 a. meets the conditions set forth in this section,

6 b. is certified in this state, or

7 ~~b.~~

8 c. maintains at least Two Hundred Fifty Million Dollars

9 (\$250,000,000.00) in capital and surplus when

10 determined in accordance with the NAIC Accounting

11 Practices and Procedures Manual, including all

12 amendments thereto adopted by the NAIC, excluding the

13 impact of any permitted or prescribed practices~~+~~+ and

14 is:

15 (1) licensed in at least twenty-six states, or

16 (2) licensed in at least ten states, and licensed or

17 accredited in a total of at least thirty-five

18 states.

19 5. The authority to adopt regulations pursuant to this
20 subsection does not limit the Commissioner's general authority to
21 adopt regulations pursuant to subsection A of this section.

22 SECTION 3. This act shall become effective November 1, 2021.

23 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/01/2021 - DO
24 PASS.