

1 SB24
2 203371-4
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 02-FEB-21
6 PFD: 12/16/2020

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to insurance; to implement the reinsurance
12 collateral provisions of the covered agreements that were
13 entered into between the United States and the European Union
14 and the United Kingdom, and for those purposes to amend
15 Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19,
16 Code of Alabama 1975, and to add Sections 27-5B-8.1 and
17 27-5B-20 to the Code of Alabama 1975.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 27-5B-3, 27-5B-9, 27-5B-11,
20 27-5B-14, and 27-5B-19, Code of Alabama 1975, are amended to
21 read as follows:

22 "§27-5B-3.

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

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

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

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

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

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

19 "§27-5B-9.

20 "Credit shall be allowed when the reinsurance is
21 ceded to an assuming insurer not meeting the requirements of
22 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, ~~or~~ 27-5B-8, or
23 27-5B-8.1, but only as to the insurance of risks located in
24 jurisdictions where the reinsurance is required by applicable
25 law or regulation of that jurisdiction.

26 "§27-5B-11.

1 "If the assuming insurer does not meet the
2 requirements of Section 27-5B-4, 27-5B-5, ~~or~~ 27-5B-6, or
3 27-5B-8.1, the credit permitted by Section 27-5B-7 or 27-5B-8
4 shall not be allowed unless the assuming insurer agrees in the
5 trust agreements to the following conditions:

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

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

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

1 regulatory oversight to the trustee for distribution in
2 accordance with the trust agreement.

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

6 "§27-5B-14.

7 "(a) 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-8.1, 27-5B-9,
11 27-5B-10, 27-5B-11, 27-5B-12, or 27-5B-13 shall be allowed in
12 an amount not exceeding the liabilities carried by the ceding
13 insurer.

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

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

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

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

24 "(c) The reduction shall be in the amount of funds
25 held by or on behalf of the ceding insurer, including funds
26 held in trust for the ceding insurer, under a reinsurance
27 contract with the assuming insurer as security for the payment

1 of obligations thereunder, if the security is held in the
2 United States subject to withdrawal solely by, and under the
3 exclusive control of, the ceding insurer; or, in the case of a
4 trust, held in a qualified U.S. financial institution, as
5 defined in subsection (b) of Section 27-5B-15. This security
6 may be in the form of any of the following:

7 "(1) Cash.

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

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

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

1 "(5) Any other form of security acceptable to the
2 commissioner.

3 "§27-5B-19.

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

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

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

12 "a. Life insurance policies with guaranteed nonlevel
13 gross premiums or guaranteed nonlevel benefits.

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

17 "c. Variable annuities with guaranteed death or
18 living benefits.

19 "d. Long-term care insurance policies.

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

23 "(2) A rule adopted pursuant to paragraph a. or b.
24 of subdivision (1) may apply to any reinsurance agreement
25 containing (i) policies issued on or after January 1, 2015, or
26 (ii) policies issued prior to January 1, 2015, if risk
27 pertaining to the pre-2015 policies is ceded in connection

1 with the reinsurance agreement, in whole or in part, on or
2 after January 1, 2015, or reinsurance agreements meeting both
3 items (i) and (ii).

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

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

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

16 "b. Is certified in this state.

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

23 "1. Licensed in at least 26 states.

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

1 "(5) The authority to adopt rules pursuant to this
2 subsection does not limit the commissioner's general authority
3 to adopt rules pursuant to subsection (a)."

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

6 §27-5B-8.1. Reinsurer domiciled in a reciprocal
7 jurisdiction.

8 (a) Credit shall be allowed when the reinsurance is
9 ceded to an assuming insurer meeting each of the following
10 conditions:

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

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

1 allowing the ceding insurer to recognize credit for
2 reinsurance.

3 b. A U.S. jurisdiction that meets the requirements
4 for accreditation under the NAIC financial standards and
5 accreditation program.

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

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

23 (3) The assuming insurer shall have and maintain, on
24 an ongoing basis, a minimum solvency or capital ratio, as
25 applicable, which shall be set forth by rule. If the assuming
26 insurer is an association, including incorporated and
27 individual unincorporated underwriters, it shall have and

1 maintain, on an ongoing basis, a minimum solvency or capital
2 ratio in the reciprocal jurisdiction where the assuming
3 insurer has its head office or is domiciled, as applicable,
4 and is also licensed.

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

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

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

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

1 d. Each reinsurance agreement shall include a
2 provision requiring the assuming insurer to provide security
3 in an amount equal to 100 percent of the assuming insurer's
4 liabilities attributable to reinsurance ceded pursuant to that
5 agreement if the assuming insurer resists enforcement of a
6 final judgment that is enforceable under the law of the
7 jurisdiction in which it was obtained or a properly
8 enforceable arbitration award, whether obtained by the ceding
9 insurer or by its legal successor on behalf of its resolution
10 estate.

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

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

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

1 (7) The assuming insurer's supervisory authority
2 shall confirm to the commissioner on an annual basis, as of
3 the preceding December 31 or at the annual date otherwise
4 statutorily reported to the reciprocal jurisdiction, that the
5 assuming insurer complies with the requirements set forth in
6 subdivisions (2) and (3).

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

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

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

21 (3) The commissioner may remove a jurisdiction from
22 the list of reciprocal jurisdictions upon a determination that
23 the jurisdiction no longer meets the requirements of a
24 reciprocal jurisdiction in accordance with a process set forth
25 in rules adopted by the commissioner, except that the
26 commissioner shall not remove from the list a reciprocal
27 jurisdiction as defined in paragraph a. or b. of subdivision

1 (1) of subsection (a). Upon removal of a reciprocal
2 jurisdiction from this list, credit for reinsurance ceded to
3 an assuming insurer which has its home office or is domiciled
4 in that jurisdiction shall be allowed, if otherwise allowed
5 pursuant to this chapter.

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

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

23 (1) While an assuming insurer's eligibility is
24 suspended, no reinsurance agreement issued, amended, or
25 renewed after the effective date of the suspension qualifies
26 for credit except to the extent that the assuming insurer's

1 obligations under the contract are secured in accordance with
2 Section 27-5B-14.

3 (2) If an assuming insurer's eligibility is revoked,
4 no credit for reinsurance may be granted after the effective
5 date of the revocation with respect to any reinsurance
6 agreements entered into by the assuming insurer, including
7 reinsurance agreements entered into prior to the date of
8 revocation, except to the extent that the assuming insurer's
9 obligations under the contract are secured in a form
10 acceptable to the commissioner and consistent with Section
11 27-5B-14.

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

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

23 (g) (1) Credit may be taken under this section only
24 for reinsurance agreements entered into, amended, or renewed
25 on or after the effective date of the act adding this section,
26 and only with respect to losses incurred and reserves reported
27 on or after the later of a. the date on which the assuming

1 insurer has met all eligibility requirements pursuant to
2 subsection (a), and b. the effective date of the new
3 reinsurance agreement, amendment, or renewal.

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

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

13 (4) Nothing in this section shall limit or in any
14 way alter the capacity of parties to any reinsurance agreement
15 to renegotiate the agreement.

16 §27-5B-20. Reinsurance Agreements Affected.

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

23 Section 3. This act shall be effective on the first
24 day of January following upon its passage and approval by the
25 Governor or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Banking and Insurance..... 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 10-FEB-21

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

Yeas 28
Nays 0

Patrick Harris,
Secretary.