

Regular Session, 2012

HOUSE BILL NO. 849

BY REPRESENTATIVE TALBOT

INSURANCE: Provides relative to reinsurance

1 AN ACT

2 To amend and reenact R.S. 22:651 and 652(2) and (3)(a), relative to reinsurance credits; to
3 clarify terms, duties, and obligations; to provide for new accreditation requirements;
4 to provide relative to the assumption of insurers' duties and obligations; to provide
5 relative to trust requirements; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 22:651 and 652(2) and (3)(a) are hereby amended and reenacted to
8 read as follows:

9 §651. Reinsurance credits

10 A. ~~Credit~~ The commissioner shall allow credit for reinsurance ~~shall be~~
11 ~~allowed to~~ a domestic ceding insurer as either an asset or deduction from liability
12 when the assuming insurer satisfies the requirements of Subsection B, C, D, ~~or E,~~ or
13 F of this Section. ~~If the requirements of Subsection D are satisfied, the requirements~~
14 ~~of Subsection F of this Section shall also be satisfied.~~ The commissioner shall allow
15 credit under Subsection B or C of this Section pertaining only to cessions of those
16 kinds or classes of business that the assuming insurer is licensed or otherwise
17 permitted to write or assume in its state of domicile or, in the case of a United States
18 branch of an alien assuming insurer, in the state through which it is entered and
19 licensed to transact insurance or reinsurance. The commissioner shall allow the
20 credit for reinsurance pursuant to Subsection D of this Section only if the assuming
21 insurer satisfies the requirements of Subsection G of this Section.

1 B. ~~Credit shall be allowed~~ The commissioner shall allow credit for
2 reinsurance when the ~~reinsurance is ceded to an~~ assuming insurer ~~which~~ is authorized
3 in this state. An authorized insurer is one ~~that~~ which holds a certificate of authority
4 to transact insurance or reinsurance.

5 C. ~~Credit shall also be allowed~~ The commissioner shall allow credit for
6 reinsurance when the ~~reinsurance is ceded to an~~ assuming insurer ~~which~~ is accredited
7 by the commissioner as a reinsurer in this state. ~~An accredited reinsurer shall be~~
8 ~~approved by the Department of Insurance after filing an application for accreditation,~~
9 ~~and:~~ To be eligible for accreditation and to receive the commissioner's approval of
10 its application for accreditation, a reinsurer shall complete each of the following:

11 (1) ~~Filing~~ File with the ~~Department of Insurance~~ commissioner evidence of
12 its submission to the jurisdiction of this state, ~~and as may be set forth by the~~
13 ~~department in regulations.~~

14 (2) ~~Submission of the reinsurer~~ Submit to the authority of the commissioner
15 ~~Department of Insurance~~ to examine its books and records ~~of the reinsurer.~~

16 (3) ~~Demonstration by the reinsurer~~ Demonstrate that ~~the reinsurer~~ it is
17 licensed or authorized to transact insurance or reinsurance in, or in the case of a
18 United States branch of an alien assuming insurer, is entered through, at least one
19 state ~~which~~ that employs standards regarding credit for reinsurance equal to or
20 exceeding those applicable under this Subpart.

21 (4) ~~Annual filing~~ File annually with the commissioner ~~Department of~~
22 ~~Insurance~~ a true copy of its annual statement filed with the insurance ~~department~~
23 regulator of its state of domicile and a copy of its most recent audited financial
24 statement.

25 (5) Demonstrate to the satisfaction of the commissioner that it has adequate
26 financial capacity to meet its reinsurance obligations and is otherwise qualified to
27 assume reinsurance from domestic insurers. The commissioner shall deem that an
28 assuming insurer meets this requirement as of the time of its application if it
29 maintains a surplus as regards policyholders in an amount not less than twenty

1 million dollars and the commissioner has not denied it accreditation within ninety
2 days after submission of its application.

3 ~~D.(1)(a) Credit shall also be allowed~~ The commissioner shall allow a
4 domestic ceding insurer credit for reinsurance under Paragraph (2) of this Subsection
5 when the reinsurance is ceded to an assuming insurer ~~which~~ that maintains a trust
6 fund in a qualified United States financial institution, as defined in R.S. 22:653(B),
7 for the payment of the valid claims of its United States policyholders and ceding
8 insurers, their assigns, and successors in interest. The assuming insurer shall report
9 and submit annually to the commissioner information substantially the same as that
10 required to be reported on the National Association of Insurance Commissioners
11 (NAIC) annual statement form by authorized insurers to enable the commissioner to
12 determine the sufficiency of the trust fund. The assuming insurer shall submit to
13 examination of its books and records by the commissioner and bear the expense of
14 examination.

15 ~~(b) Any credit for reinsurance shall not be granted under Paragraph (2) of~~
16 ~~this Subsection unless the form of the trust and amendments to the trust have been~~
17 ~~approved by the Department of Insurance. The trust instrument shall provide that~~
18 ~~contested claims shall be valid and enforceable upon the final order of any court of~~
19 ~~competent jurisdiction in the United States. The trust shall vest legal title to its~~
20 ~~assets in the trustees of the trust for its United States ceding insurers, their assigns,~~
21 ~~and successors in interest. The trust shall be subject to examination as determined~~
22 ~~by the department. The trust described herein shall remain in existence for as long~~
23 ~~as the assuming insurer shall have obligations due under the reinsurance agreements~~
24 ~~subject to the trust.~~

25 ~~(c) Not later than the twenty-eighth day of each February, the trustees of the~~
26 ~~trust established under Paragraph (2) of this Subsection shall provide a written~~
27 ~~report to the department setting forth the balance of the trust and listing the~~
28 ~~investments of the trust of the preceding calendar year, and shall certify the date of~~

1 ~~termination of the trust, if so planned, or shall certify that the trust shall not expire~~
2 ~~prior to the succeeding December thirty-first.~~

3 (2)(a) The commissioner shall not grant credit for reinsurance under this
4 Subsection unless the form of the trust and any amendments to the trust receive the
5 approval of either of the following:

6 (i) The commissioner of the state of domicile of the trust.

7 (ii) The commissioner of another state who, pursuant to the terms of the trust
8 instrument, accepts principal regulatory oversight of the trust.

9 (b) The assuming insurer shall also file the form of the trust and any trust
10 amendments with the commissioner of every domiciliary state of the ceding insurer
11 beneficiaries of the trust. The trust instrument shall provide that contested claims
12 shall be valid and enforceable upon the final order of any court of competent
13 jurisdiction in the United States. The trust shall vest legal title to its assets in its
14 trustees for the benefit of the assuming insurer's United States ceding insurers, their
15 assigns and successors in interest. The trust and the assuming insurer shall be
16 subject to examination as determined by the commissioner.

17 (c) The trust shall remain in effect for as long as the assuming insurer has
18 outstanding obligations due under the reinsurance agreements subject to the trust.
19 No later than the last day of February of each year the trustee of the trust shall report
20 to the commissioner in writing the balance of the trust and list the trust's investments
21 at the preceding year-end and shall certify the date of termination of the trust, if so
22 planned, or certify that the trust will not expire prior to the following thirty-first day
23 of December.

24 ~~(2)(3)~~(a) In the case of a single assuming insurer, the trust fund shall consist
25 of a ~~trusteed account~~ funds in trust in an amount not less than the assuming insurer's
26 liabilities attributable to business written in the United States and, in addition, the
27 assuming insurer shall maintain a trusteed surplus of not less than twenty million
28 dollars, except as provided in Subparagraph (b) of this Paragraph.

1 **(b) At any time after the assuming insurer has permanently discontinued**
2 **underwriting new business secured by the trust for at least three full years, the**
3 **commissioner with principal regulatory oversight of the trust may authorize a**
4 **reduction in the required trusted surplus, but only after a finding, based on an**
5 **assessment of the risk, that the new required surplus level is adequate for the**
6 **protection of the United States ceding insurers, policyholders, and claimants in light**
7 **of reasonably foreseeable adverse loss development. The risk assessment may**
8 **involve an actuarial review, including an independent analysis of reserves and cash**
9 **flow, and shall consider all material risk factors, including when applicable the lines**
10 **of business involved, the stability of the incurred loss estimates and the effect of the**
11 **surplus requirements on the assuming insurer's liquidity or solvency. The minimum**
12 **required trusted surplus may not be reduced to an amount less than thirty percent**
13 **of the assuming insurer's liabilities attributable to reinsurance ceded by United States**
14 **ceding insurers covered by the trust.**

15 **(b) (c) In the case of a group of assuming insurers that includes incorporated**
16 **and individual unincorporated underwriters, the following provisions apply;**~~the trust~~
17 **shall consist of a trusted account representing the group's liabilities attributable to**
18 **business written in the United States and, in addition, the group shall maintain a**
19 **trusted surplus of which one hundred million dollars shall be held jointly for the**
20 **benefit of United States ceding insurers of any member of the group. The group**
21 **shall make available to the commissioner an annual certification of the solvency of**
22 **each underwriter by its domiciliary regulator and its independent public accountants.**

23 **(i) For reinsurance ceded under reinsurance agreements with an inception,**
24 **amendment, or renewal date on or after January 1, 1993, the trust shall consist of a**
25 **trusted account in an amount not less than the respective underwriters' several**
26 **liabilities attributable to business ceded by United States domiciled ceding insurers**
27 **to any underwriter of the group.**

28 **(ii) For reinsurance ceded under reinsurance agreements with an inception**
29 **date on or before December 31, 1992, and not amended or renewed after that date,**

1 notwithstanding the other provisions of this Subpart, the trust shall consist of a
2 trusteed account in an amount not less than the respective underwriters' several
3 insurance and reinsurance liabilities attributable to business written in the United
4 States.

5 (iii) In addition to these trusts, the group shall maintain in trust a trusteed
6 surplus of which one hundred million dollars shall be held jointly for the benefit of
7 the United States domiciled ceding insurers or any member of the group for all years
8 of account.

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

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

19 (e) (d) In the case of a group of incorporated underwriters ~~insurers~~ under
20 common administration, the group shall:

21 (i) Submit to ~~this state's~~ the commissioner's authority to examine its books
22 and records and bear the expense of ~~the~~ any examination.

23 (ii) Maintain aggregate policyholders' surplus of ten billion dollars.

24 (iii) Maintain a trust fund ~~consisting of a trusteed account~~ in an amount not
25 less than the group's several liabilities attributable to business ceded by United States
26 ceding insurers to any member of the group.

27 (iv) In addition, maintain a joint trusteed surplus of which one hundred
28 million dollars shall be held jointly for the benefit of the United States ceding
29 insurers of any member of the group as additional security for these liabilities.

1 (v) Within ninety days after its financial statements are due to be filed with
2 the group's domiciliary regulator make available to the commissioner an annual
3 certification of the member's solvency by the member's domiciliary regulator and
4 financial statements of each underwriter member of the group audited by
5 independent public accountants.

6 E. The commissioner shall allow credit for reinsurance when the assuming
7 insurer is certified by the commissioner as a reinsurer in this state and secures its
8 obligations in accordance with the requirements of this Subsection.

9 (1) To be eligible for certification, the assuming insurer shall meet the
10 following requirements:

11 (a) The assuming insurer shall be domiciled and licensed to transact
12 insurance or reinsurance in a qualified jurisdiction, as determined by the
13 commissioner pursuant to Paragraph (3) of this Subsection.

14 (b) The assuming insurer shall maintain minimum capital and surplus or its
15 equivalent, in an amount to be determined by the commissioner, pursuant to
16 regulation.

17 (c) The assuming insurer shall maintain financial strength ratings from two
18 or more rating agencies deemed acceptable by the commissioner pursuant to
19 regulation.

20 (d) The assuming insurer shall agree to submit to the jurisdiction of this
21 state, appoint the commissioner as its agent for service of process in this state, and
22 agree to provide security for one hundred percent of the assuming insurer's liabilities
23 attributable to reinsurance ceded by United States ceding insurers if it resists
24 enforcement of a final United States judgment.

25 (e) The assuming insurer shall agree to meet applicable information filing
26 requirements as determined by the commissioner for its initial application for
27 certification and for its continual maintenance of certification as a reinsurer.

28 (f) The assuming insurer shall satisfy any other requirements for certification
29 deemed relevant by the commissioner.

1 (2) An association including incorporated and individual unincorporated
2 underwriters may be a certified reinsurer. To be eligible for certification, in addition
3 to satisfying requirements of Paragraph (1) of this Subsection:

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

9 (b) The incorporated members of the association shall not engage in any
10 business other than underwriting as a member of the association and shall be subject
11 to the same level of regulation and solvency control to which the unincorporated
12 members are subject, pursuant to the authority of the association's domiciliary
13 regulator.

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

20 (3) The commissioner shall create and publish a list of qualified
21 jurisdictions.

22 (a) To determine the eligibility of the domiciliary jurisdiction of a non-
23 United States assuming insurer for recognition as a qualified jurisdiction, the
24 commissioner shall evaluate the appropriateness and effectiveness of the reinsurance
25 supervisory system of the jurisdiction, both initially and continually thereafter, and
26 consider the rights, benefits, and the extent of reciprocal recognition afforded by the
27 non-United States jurisdiction to reinsurers licensed and domiciled in the United
28 States. A qualified jurisdiction shall agree to share information and cooperate with
29 the commissioner with respect to all certified reinsurers domiciled within that

1 jurisdiction. The commissioner may not recognize a jurisdiction as a qualified
2 jurisdiction if the commissioner determines that it does not adequately and promptly
3 enforce final United States judgments and arbitration awards. The commissioner
4 may consider additional factors in determining qualified jurisdictions.

5 (b) The commissioner shall consider the list of qualified jurisdictions
6 published by the NAIC through the NAIC committee process in determining
7 qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that
8 does not appear on the list of qualified jurisdictions, the commissioner shall provide
9 thoroughly documented justification in accordance with criteria to be developed
10 pursuant to regulations.

11 (c) The commissioner shall recognize as qualified jurisdictions those United
12 States jurisdictions that meet the requirements for accreditation under the NAIC
13 financial standards and accreditation program.

14 (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
15 jurisdiction, the commissioner has the discretion to suspend the reinsurer's
16 certification indefinitely, in lieu of revocation.

17 (4) The commissioner shall publish a list of all certified reinsurers and their
18 ratings assigned by the commissioner giving due consideration to the financial
19 strength ratings assigned by rating agencies acceptable to the commissioner pursuant
20 to regulation.

21 (5) A certified reinsurer shall secure obligations assumed from United States
22 ceding insurers under this Subsection at a level consistent with its rating, as specified
23 in regulations promulgated by the commissioner.

24 (a) For a domestic ceding insurer to qualify for full financial statement credit
25 for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain
26 security in a form acceptable to the commissioner and consistent with the provisions
27 of R.S. 22:652, or in a multi-beneficiary trust in accordance with Subsection D of
28 this Section, except as otherwise provided in this Subsection.

1 (b) If a certified reinsurer maintains a trust to fully secure its obligations
2 subject to Subsection D of this Section, and chooses to secure its obligations incurred
3 as a certified reinsurer in the form of a multi-beneficiary trust, the certified reinsurer
4 shall maintain separate trust accounts for its obligations incurred under reinsurance
5 agreements issued or renewed as a certified reinsurer with reduced security as
6 permitted by this Subsection or comparable laws of other United States jurisdictions
7 and for its obligations subject to Subsection D of this Section. It shall be a condition
8 to the grant of certification pursuant to Subsection E of this Section that the certified
9 reinsurer shall have bound itself, by the language of the trust and agreement with the
10 commissioner with principal regulatory oversight of each such trust account, to fund,
11 upon termination of any such trust account, out of the remaining surplus of such trust
12 any deficiency of any other such trust account.

13 (c) The minimum trustee surplus requirements provided in Subsection D
14 of this Section are not applicable with respect to a multi-beneficiary trust maintained
15 by a certified reinsurer for the purpose of securing obligations incurred pursuant to
16 this Subsection, except that such trust shall maintain a minimum trustee surplus of
17 ten million dollars.

18 (d) With respect to obligations incurred by a certified reinsurer pursuant to
19 this Subsection, if the security is insufficient, the commissioner shall reduce the
20 allowable credit by an amount proportionate to the deficiency, and has the discretion
21 to impose further reductions in allowable credit upon finding that there is a material
22 risk that the certified reinsurer's obligations will not be paid in full when due.

23 (e) For purposes of this Subsection, a certified reinsurer whose certification
24 has been terminated for any reason shall be treated as a certified reinsurer required
25 to secure one hundred percent of its obligations.

26 (i) As used in this Subsection, the term "terminated" refers to revocation,
27 suspension, voluntary surrender, and inactive status.

1 (ii) If the commissioner continues to assign a higher rating as permitted by
2 other provisions of this Section, this requirement does not apply to a certified
3 reinsurer in inactive status or to a reinsurer whose certification has been suspended.

4 (6) The commissioner may certify a reinsurer in this state based on the
5 certification and assigned rating granted to that reinsurer by another NAIC accredited
6 jurisdiction.

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

13 E. F. Any credit for reinsurance shall also be allowed when the reinsurance
14 is ceded to an assuming insurer not meeting the requirements of Subsection B, C, ~~or~~
15 D, or E of this Section, only as to the insurance of risks located in jurisdictions where
16 the reinsurance is required by applicable law of that jurisdiction.

17 F. G. If the assuming insurer is not authorized, ~~or accredited, or certified~~ to
18 transact insurance or reinsurance in this state, the commissioner shall not allow the
19 credit permitted by Subsection D ~~shall not be allowed~~ unless each of the following
20 criteria are met:

21 (1) The assuming insurer provides the following in all reinsurance
22 agreements:

23 (a) That in the event of the failure of the assuming insurer to perform its
24 obligations under the terms of the reinsurance agreement, the assuming insurer, at
25 the request of the ceding insurer, shall submit to the jurisdiction of any court of
26 competent jurisdiction in any state of the United States, comply with all requirements
27 necessary to give such court jurisdiction, and abide by the final decision of the
28 district court or appellate court.

1 (b) To designate the commissioner as its true and lawful attorney, who may
2 be served any lawful service of process in any action, suit, or proceeding instituted
3 by or on behalf of the ceding insurer.

4 ~~(c)~~ (2) The provisions of Subparagraphs (a) and (b) of ~~this Paragraph (1) of~~
5 this Subsection shall not be construed to conflict with or override the obligation of
6 the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation
7 is created in the reinsurance agreement.

8 ~~(2)~~ (3) The assuming insurer files with the ~~department~~ commissioner a list
9 identifying its officers and directors, or similar principals, along with biographical
10 information for each and provides an annual update of this information.

11 ~~(3)~~ (4) The assuming insurer agrees to allow the ~~department~~ commissioner
12 to examine its books and records and to waive any protection it has under any
13 secrecy laws of its domiciliary jurisdiction of the reinsurer, except that any
14 examination shall only take place upon showing of good cause by the ~~department~~
15 commissioner for concern about the financial soundness or solvency of the subject
16 entity.

17 G. H. The ceding insurer may take credit for the reserves on such ceded risks
18 to the extent reinsured, except that:

19 (1) ~~No credit~~ The ceding insurer shall ~~not be taken~~ take credit for such
20 reserves unless the insurer accepting the reinsurance meets the requirements set forth
21 in this Section as valid assuming insurers.

22 (2) ~~No credit~~ The commissioner shall ~~be not allow credit~~ allowed to any
23 ceding insurer for reinsurance, as an admitted asset or as a deduction from liability,
24 unless the reinsurance shall be payable, in the event of insolvency of the ceding
25 insurer, to its liquidator or receiver on the basis of the claim or claims allowed
26 against the insolvent ceding insurer by any court of competent jurisdiction or any
27 justice or judge thereof, or by any receiver or liquidator having authority to
28 determine and allow such claims, except either where the reinsurance contract with
29 the consent of the direct insured or insureds specifically provides another payee of

1 such reinsurance in the event of the insolvency of the ceding insurer, or when the
2 assuming insurer with the consent of the direct insured or insureds has assumed such
3 policy obligations of the ceding insurer as direct obligations of the assuming insurer
4 to the payees under such policies and in substitution for the obligations of the ceding
5 insurer to such payees.

6 (3) ~~No~~ The commissioner shall not permit credit for reinsurance ~~shall be~~
7 ~~permitted~~ unless the assuming insurer has been doing business in its country of
8 domicile for at least three years, or is an affiliate of an insurer or reinsurer ~~which that~~
9 has been doing business in its country of domicile for at least three years, unless the
10 ~~department~~ commissioner, for good cause shown, waives this three-year operating
11 requirement by rule or regulation.

12 I. If the assuming insurer does not meet the requirements of Subsection B or
13 C of this Section, the credit permitted by Subsection D or E of this Section shall not
14 be allowed unless the assuming insurer agrees in the trust agreements to each of the
15 following conditions:

16 (1) Notwithstanding any other provisions in the trust instrument, if the trust
17 fund is inadequate because it contains an amount less than the amount required by
18 Paragraph (D)(3) of this Section, or if the grantor of the trust has been declared
19 insolvent or placed into receivership, rehabilitation, liquidation, or similar
20 proceedings under the laws of its state or country of domicile, the trustee shall
21 comply with an order of the commissioner with regulatory oversight over the trust
22 or with an order of a court of competent jurisdiction directing the trustee to transfer
23 to the commissioner with regulatory oversight all of the assets of the trust fund.

24 (2) The commissioner with regulatory oversight, according to the laws
25 relative to the liquidation of domestic insurance companies of the state in which the
26 trust is domiciled, shall distribute the assets and shall value claims. Claims shall
27 also be directed to the commissioner with the regulatory oversight as provided in this
28 Paragraph.

1 (3) If the commissioner with regulatory oversight determines that the assets
2 of the trust fund or any part thereof are not necessary to satisfy the claims of the
3 United States ceding insurers of the grantor of the trust, the assets or part thereof
4 shall be returned by the commissioner with regulatory oversight to the trustee for
5 distribution in accordance with the trust agreement.

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

8 J. If an accredited or certified reinsurer ceases to meet the requirements for
9 accreditation or certification, the commissioner may suspend or revoke the
10 reinsurer's accreditation or certification.

11 (1) The commissioner shall give the reinsurer notice and opportunity for a
12 hearing. The suspension or revocation may not take effect until after the
13 commissioner's order upon a hearing unless one of the following circumstances are
14 present:

15 (a) The reinsurer waives its right to a hearing.

16 (b) The commissioner's order is based upon regulatory action by the
17 reinsurer's domiciliary jurisdiction or upon the voluntary surrender or termination of
18 the reinsurer's eligibility to transact insurance or reinsurance business in its
19 domiciliary jurisdiction or in the primary certifying state of the reinsurer under
20 Paragraph (E)(6) of this Section.

21 (c) The commissioner finds that an emergency requires immediate action and
22 a court of competent jurisdiction has not stayed the commissioner's action.

23 (2) While a reinsurer's accreditation or certification is suspended, no
24 reinsurance contract issued or renewed after the effective date of the suspension
25 qualifies for credit except to the extent that the reinsurer's obligations under the
26 contract are secured in accordance with R.S. 22:652. If a reinsurer's accreditation
27 or certification is revoked, no credit for reinsurance may be granted after the
28 effective date of the revocation, except to the extent that the reinsurer's obligations

1 under the contract are secured in accordance with the provisions of Paragraph (E)(5)
2 of this Section or in accordance with R.S. 22:652.

3 K.(1) A ceding insurer shall take steps to manage its reinsurance
4 recoverables proportionate to its own book of business. A domestic ceding insurer
5 shall notify the commissioner within thirty days after reinsurance recoverables from
6 any single assuming insurer, or group of affiliated insurers, exceeds fifty percent of
7 the domestic ceding insurer's last reported surplus to policyholders, or after it is
8 determined that reinsurance recoverables from any single assuming insurer, or group
9 of affiliated assuming insurers, is likely to exceed this limit. The notification shall
10 demonstrate that the exposure is safely managed by the domestic ceding insurer.

11 (2) A ceding insurer shall take steps to diversify its reinsurance program. A
12 domestic ceding insurer shall notify the commissioner within thirty days after ceding
13 to any single assuming insurer, or group of affiliated assuming insurers, more than
14 twenty percent of the ceding insurer's gross written premium in the prior calendar
15 year, or after it has determined that the reinsurance ceded to any single assuming
16 insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The
17 notification shall demonstrate that the exposure is safely managed by the domestic
18 ceding insurer.

19 §652. Reduction from liability for ceded reinsurance

20 A reduction from liability for the reinsurance ceded by a domestic insurer to
21 an assuming insurer that fails to satisfy the requirements of R.S. 22:651 shall be
22 allowed in an amount not exceeding the liabilities carried by the ceding insurer, and
23 such a reduction shall be in the amount of funds held by or on behalf of the ceding
24 insurer, including funds held in trust in this state for the ceding insurer, under a
25 reinsurance contract with such assuming insurer as security for the payment of
26 obligations thereunder, if such security is held in this state subject to withdrawal
27 solely by, and under the exclusive control of, the ceding insurer, or, in the case of a
28 trust, held in a qualified United States financial institution, as defined in R.S.

1 22:653(B). The security may be in the form of:

2 * * *

3 (2) Securities listed by the Securities Valuation Office of the National
4 Association of Insurance Commissioners (NAIC), including those deemed exempt
5 from filing as defined by the Purposes and Procedures Manual of the NAIC
6 Securities Valuation Office, and qualifying as admitted assets.

7 (3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed
8 by a qualified United States institution, as defined in R.S. 22:653(A), effective no
9 later than December thirty-first in respect of the year for which filing is being made,
10 and in possession of or in trust for the ceding ~~company~~ insurer on or before the filing
11 date of its annual statement.

12 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot

HB No. 849

Abstract: Provides relative to reinsurance credits.

Present law provides that credit for reinsurance be allowed a domestic ceding insurer as either an asset or deduction from liability when the assuming insurer satisfies the requirements of present law.

Proposed law authorizes the commissioner to allow a credit for reinsurance. The commissioner shall allow the credit only if the assuming insurer satisfies the requirements of proposed law.

Present law allows for reinsurance credits to domestic ceding insurers when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. Present law further provides that an accredited reinsurer is a reinsurer that has been approved by the Dept. of Insurance after filing an application for accreditation and:

- (1) Has filed evidence of its submission to the jurisdiction of this state.
- (2) Has submitted to the authority of the Dept. of Insurance to examine its books and records.
- (3) Has demonstrated that it is licensed or authorized to transact insurance or reinsurance in at least one state which has standards for reinsurance credits.
- (4) Files a true copy of its annual statement with the Dept. of Insurance annually.

Proposed law retains present law, and further provides that credit may be allowed when the reinsurance is ceded to an insurer who holds a surplus in excess of \$20 million and who the commissioner has not denied accreditation within 90 days after submission of its application.

Present law allows for reinsurance credits to domestic ceding insurers when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified U.S. financial institution, as provided by present law, for the payment of the valid claims of its U.S. policyholders and ceding insurers.

Proposed law retains present law, and further requires the assuming insurer to submit to the commissioner's examination of its books and records.

Present law further provides that credit will not be granted unless the form of the trust and amendments to the trust have been approved by the Dept. of Insurance. The trust must vest legal title to its assets in the trustees of the trust for its U.S. ceding insurers and shall be subject to examination as determined by the department. Requires trustees to submit a written report to the department no later than Feb. 28 of each year, detailing the balance of the trust and the investments of the trust for the preceding calendar year. Provides that the trust shall not expire prior to Dec. 31 of the succeeding year.

Proposed law deletes present law and instead provides that the commissioner shall only grant credit if the form of the trust receives the approval of either the commissioner of the state of domicile of the trust or the commissioner of another state who accepts principal regulatory oversight of the trust.

Proposed law further requires the assuming insurer to file the form of the trust and any trust amendments with the commissioner of every domiciliary state of the ceding insurer beneficiaries of the trust.

Proposed law requires the trust instrument to include provision that contested claims shall be valid and enforceable upon the final order of any U.S. court of competent jurisdiction.

Proposed law provides that the trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

Proposed law retains the provision of present law that requires the trustee to make a written report to the commissioner, detailing the trust's balance and investments, no later than the last day of Feb. of each year.

Present law provides that, in the case of a single assuming insurer, the trust shall consist of a trustee account in an amount no less than the assuming insurer's liabilities attributable to business written in the U.S., plus a trustee surplus of at least \$20 million.

Proposed law retains present law, except for cases in which the assuming insurer has permanently discontinued underwriting new business secured by that trust for at least three years. In such a case, the commissioner with regulatory oversight may, after a finding based on the assessment of the risk, authorize a reduction in the amount of the trustee surplus. The assuming insurer would still be required to maintain a trustee surplus in an amount adequate for the protection of the U.S. ceding insurers, policyholders, and claimants. In any case, the amount of the trustee surplus shall never be less than an amount equal to 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

Present law provides that, when there is a group of assuming insurers that include unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities that are attributable to business written in the U.S. Further requires the group of assuming insurers to maintain a joint trustee surplus of \$100 million for the benefit of the U.S. ceding insurers of any member of the group of assuming insurers.

Present law further requires the group to make an annual certification of each member's solvency available to the commissioner.

Proposed law makes the following requirements for a group of assuming insurers that include incorporated and individual unincorporated underwriters:

- (1) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after Jan. 1, 1994, the trust must contain a trustee account in an amount that is no less than the amount of the respective underwriters' several liabilities that are attributable to business ceded by U.S. domiciled ceding insurers.
- (2) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or before Dec. 31, 1992, the trust shall contain a trustee account in an amount that is no less than the amount of the respective underwriters' several insurance and reinsurance liabilities that are attributable to business written in the U.S.
- (3) Regardless of the date of inception of the reinsurance agreement, the group shall maintain in trust a trustee surplus of \$100 million, which shall be held jointly for the benefit of the U.S. domiciled ceding insurers.

Proposed law prohibits the incorporated members of the group from engaging in any business other than its underwriting as a member of the group; proposed law further provides that incorporated members shall be subject to the same level of regulation as the unincorporated members.

Proposed law requires the group to provide an annual certification of each underwriter's solvency to the commissioner within 90 days after the date its financial statements are to be filed with the group's domiciliary regulator.

Present law provides that, in the case of a group of incorporated insurers under common administration, the group shall:

- (1) Submit to this state's authority to examine its books and records and shall bear the expense of examination.
- (2) Maintain an aggregate policyholders' surplus of \$10 billion.
- (3) Maintain a trust consisting of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by U.S. ceding insurers to any member of the group.
- (4) In addition to the aforementioned trustee account, maintain a joint trustee surplus account that jointly holds \$100 million.
- (5) Provide an annual certification of each underwriter's solvency to the commissioner within 90 days after the date its financial statements are to be filed with the group's domiciliary regulator.

Proposed law retains present law.

Proposed law provides that the commissioner shall allow credit for reinsurance when the assuming insurer is certified by the commissioner as a reinsurer in this state and meets all of the following requirements:

- (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction.

- (2) The assuming insurer must maintain minimum capital and surplus or its equivalent.
- (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner.
- (4) The assuming insurer must agree to submit to the jurisdiction of this state and appoint the commissioner as its agent for service of process in this state, as well as provide security for 100% of its liabilities attributable to reinsurance ceded by U.S. ceding insurers.
- (5) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner.
- (6) The assuming insurer must satisfy any other requirements deemed relevant by the commissioner.

Proposed law provides that an association including incorporated and individual unincorporated underwriters may be a certified reinsurer, provided the association meets the requirements of proposed law.

Proposed law requires the commissioner to create and publish a list of qualified jurisdictions.

Proposed law requires the commissioner to publish a list of certified reinsurers, along with the ratings he has assigned them. The ratings shall factor in the financial strength ratings assigned by rating agencies.

Proposed law requires certified reinsurers to secure obligations assumed from U.S. ceding insurers at a level that is consistent with the certified reinsurer's rating, as specified in the commissioner's regulations.

Proposed law provides that the commissioner may certify a reinsurer in this state based upon the certification and assigned rating granted to that reinsurer by another jurisdiction that is accredited by the National Association of Insurance Commissioners (NAIC).

Proposed law provides that a certified reinsurer that ceases to assume new business may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.

Present law provides that credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of present law but the insurance risks are located in a jurisdiction where reinsurance is required by the applicable law of that jurisdiction.

Present law provides if the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state, credit permitted by present law shall not be allowed unless certain criteria are met.

Present law further provides that the ceding insurer may take credit for the reserves on such ceded risks to the extent reinsured, except for the exceptions provided in present law.

Proposed law retains present law.

Proposed law provides that an assuming insurer who does not meet the requirements of proposed law shall not be allowed credit unless the following conditions are met:

- (1) When the trust fund is inadequate because it contains an amount less than the amount required by proposed law, or because the grantor of the trust has been declared insolvent or similar proceedings, 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 commissioner with regulatory oversight shall distribute the assets. The commissioner shall value the claims. Claims shall also be directed to the commissioner with regulatory oversight.
 - (3) If the commissioner with regulatory oversight determines that the assets of the trust fund are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned to the trustee for distribution in accordance with the trust agreement.
 - (4) Proposed law requires the grantor to waive any rights that are inconsistent with proposed law.

Proposed law grants the commissioner the authority to suspend or revoke, after notice and opportunity for a hearing, the accreditation or certification of a reinsurer that ceases to meet the requirements of proposed law. Provides that, while a reinsurer's accreditation or certification is suspended, or in the event that it is revoked, no reinsurance contract issued or renewed after the effective date shall qualify, except to the extent that the reinsurer's obligations under that contract are secured in accordance with present law.

Proposed law requires ceding insurers to take steps to manage its reinsurance recoverables. Further requires domestic ceding insurers to notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated insurers, exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated insurers, is likely to exceed this limit.

Proposed law requires ceding insurers to take steps to diversify its reinsurance program. Further requires domestic ceding insurers to notify the commissioner within 30 days after ceding more than 20% of its gross written premium to any single assuming insurer or group of affiliated insurers.

Present law allows for reductions of liability for the reinsurance ceded by domestic insurers to assuming insurers when the assuming insurer fails to meet the requirements of proposed law. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust in this state for the ceding insurer under a reinsurance contract with the assuming insurer acting as security for the payment of the underlying obligations. Present law further provides that such security may be in the form of cash, securities listed by the Securities Valuation Office of the NAIC, or clean and irrevocable, unconditional letters of credit that are issued or confirmed by a qualified U.S. institution.

Proposed law retains present law and adds that the securities that may be used in trust to secure underlying obligations include those securities that are deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office.

(Amends R.S. 22:651 and 652(2) and (3)(a))