

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 849 by Representative Talbot

INSURANCE: Provides relative to reinsurance

Synopsis of Senate Amendments

1. Clarifies that the type of institution from which an assuming insurer may use a clean, irrevocable, unconditional letter of credit as a form of security shall be a financial institution.
2. Makes technical changes.

Digest of Bill as Finally Passed by Senate

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))