

2020 Regular Session

HOUSE BILL NO. 247

BY REPRESENTATIVE GREEN

INSURANCE: Provides relative to credit for reinsurance

1 AN ACT

2 To amend and reenact R.S. 22:651(A), (B), (C)(introductory paragraph), (E)(introductory
3 paragraph) and (1), and (F) through (K) and to enact R.S. 22:651(L), relative to
4 reinsurance credits; to provide for additional requirements for foreign and alien
5 insurers; to provide for recognition of reciprocal jurisdictions; to provide relative to
6 the duties and obligations of assuming insurers; to provide for applicability; to
7 provide for definitions and criteria; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:651(A), (B), (C)(introductory paragraph), (E)(introductory
10 paragraph) and (1), and (F) through (K) is hereby amended and reenacted and R.S. 22:651(L)
11 is hereby enacted to read as follows:

12 §651. Reinsurance credits

13 A. The commissioner shall allow credit for reinsurance to a domestic ceding
14 insurer as either an asset or deduction from liability when the assuming insurer
15 satisfies the requirements of Subsection B, C, D, E, ~~or F~~, or G of this Section.
16 Additionally, the commissioner may adopt by regulation pursuant to R.S. 22:661(B)
17 specific additional requirements relating to or setting forth the valuation of assets or
18 reserve credits, the amount and forms of security supporting reinsurance
19 arrangements described in R.S. 22:661(B), or the circumstances pursuant to which
20 credit will be reduced or eliminated. The commissioner shall allow credit under

1 Subsection B or C of this Section pertaining only to cessions of those kinds or
2 classes of business that the assuming insurer is licensed or otherwise permitted to
3 write or assume in its state of domicile or, in the case of a United States branch of
4 an alien assuming insurer, in the state through which it is entered and licensed to
5 transact insurance or reinsurance. The commissioner shall allow the credit for
6 reinsurance pursuant to Subsection D of this Section only if the assuming insurer
7 satisfies the requirements of Subsection ~~G~~ H of this Section.

8 B. The commissioner shall allow credit for reinsurance when the assuming
9 insurer is ~~authorized in this state. An authorized insurer is one that~~ holds a certificate
10 of authority to transact insurance or reinsurance in this state.

11 C. The commissioner shall allow credit for reinsurance when the assuming
12 insurer is an accredited ~~by the commissioner as~~ a reinsurer in this state. To be
13 eligible for accreditation and to receive the commissioner's approval of its
14 application for accreditation, a reinsurer shall complete each of the following:

15 * * *

16 E.(1) The commissioner shall allow credit for reinsurance when the
17 assuming insurer is a certified ~~by the commissioner as~~ a reinsurer in this state and
18 secures its obligations in accordance with the requirements of this Subsection.

19 ~~(†)~~ To be eligible for certification, the assuming insurer shall meet the
20 following requirements:

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

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

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

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

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

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

11 * * *

12 F.(1) The commissioner shall allow credit for reinsurance when the
13 reinsurance is ceded to an assuming insurer meeting each of the following
14 conditions:

15 (a)(i) The assuming insurer has its head office or is domiciled in, as
16 applicable, and is licensed in a reciprocal jurisdiction.

17 (ii) As used in this Subsection, a "reciprocal jurisdiction" is a jurisdiction
18 that meets one of the following criteria:

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

1 (bb) A United States jurisdiction that meets the requirements for
2 accreditation under the NAIC financial standards and accreditation program.

3 (cc) A qualified jurisdiction, as determined by the commissioner pursuant
4 to Paragraph (E)(3) of this Section, which is not otherwise described in Subitem (aa)
5 or (bb) of this Item and which meets certain additional requirements, consistent with
6 the terms and conditions of in-force covered agreements, as specified by the
7 commissioner pursuant to regulation.

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

16 (c) The assuming insurer has and maintains, on an ongoing basis, a minimum
17 solvency or capital ratio, as applicable, which will be set forth in regulation. If the
18 assuming insurer is an association, including incorporated and individual
19 unincorporated underwriters, it shall have and maintain, on an ongoing basis, a
20 minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming
21 insurer has its head office or is domiciled, as applicable, and is also licensed.

22 (d) The assuming insurer agrees and provides adequate assurance to the
23 commissioner, in a form specified by the commissioner pursuant to regulation, that
24 it will comply with all of the following:

25 (i) The assuming insurer shall provide prompt written notice and explanation
26 to the commissioner if it falls below the minimum requirements set forth in
27 Subparagraphs (b) or (c) of this Paragraph or if any regulatory action is taken against
28 it for serious noncompliance with applicable law.

1 (ii) The assuming insurer shall consent in writing to the jurisdiction of the
2 courts of this state and to the appointment of the commissioner as agent for service
3 of process. The commissioner may require that consent for service of process be
4 provided to the commissioner and included in each reinsurance agreement. Nothing
5 in this Section limits, or in any way alters, the capacity of parties to a reinsurance
6 agreement to agree to alternative dispute resolution mechanisms, except to the extent
7 such agreements are unenforceable under applicable insolvency or delinquency laws.

8 (iii) The assuming insurer shall consent in writing to pay any final judgment
9 that has been declared enforceable in a jurisdiction where the judgment was
10 obtained, wherever enforcement is sought by a ceding insurer or its legal successor.

11 (iv) Each reinsurance agreement shall include a provision requiring the
12 assuming insurer to provide security in an amount equal to one hundred percent of
13 the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that
14 agreement if the assuming insurer resists enforcement of a final judgment that is
15 enforceable under the law of the jurisdiction in which it was obtained or a properly
16 enforceable arbitration award, whether obtained by the ceding insurer or by its legal
17 successor on behalf of its resolution estate.

18 (v) The assuming insurer shall confirm that it is not presently participating
19 in any solvent scheme of arrangement which involves this state's ceding insurers and
20 agree to notify the ceding insurer and the commissioner and to provide security in
21 an amount equal to one hundred percent of the assuming insurer's liabilities to the
22 ceding insurer, should the assuming insurer enter into such a solvent scheme of
23 arrangement. Such security shall be in a form consistent with Subsection E of this
24 Section, R.S. 22:652, and as specified by the commissioner pursuant to regulations.

25 (e) The assuming insurer or its legal successor provides, if requested by the
26 commissioner, on behalf of itself and any legal predecessors, certain documentation
27 to the commissioner, as specified by the commissioner pursuant to regulations.

28 (f) The assuming insurer maintains a practice of prompt payment of claims
29 under reinsurance agreements, pursuant to criteria set forth in regulation.

1 (g) The assuming insurer's supervisory authority confirms to the
2 commissioner on an annual basis, as of the preceding December thirty-first or at the
3 annual date otherwise statutorily reported to the reciprocal jurisdiction, that the
4 assuming insurer complies with the requirements set forth in Subparagraph (b) and
5 (c) of this Paragraph.

6 (2) Nothing in this Subsection precludes an assuming insurer from providing
7 the commissioner with information on a voluntary basis.

8 (3) The commissioner shall timely create and publish a list of reciprocal
9 jurisdictions, subject to the following:

10 (a) A list of reciprocal jurisdictions is published through the NAIC
11 Committee Process. The commissioner's list shall include any reciprocal jurisdiction
12 as defined pursuant to Subitems (1)(a)(ii)(aa) and (bb) of this Subsection, and shall
13 consider any other reciprocal jurisdiction included on the NAIC list. The
14 commissioner may approve a jurisdiction that does not appear on the NAIC list of
15 reciprocal jurisdictions in accordance with criteria developed pursuant to regulations.

16 (b) The commissioner may remove a jurisdiction from the list of reciprocal
17 jurisdictions upon a determination that the jurisdiction no longer meets the
18 requirements of a reciprocal jurisdiction, in accordance with a process set forth in
19 regulations, except that the commissioner shall not remove from the list a reciprocal
20 jurisdiction as defined pursuant to Subitems (1)(a)(ii)(aa) and (bb) of this Subsection.
21 Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded
22 to an assuming insurer which has its home office or is domiciled in that jurisdiction
23 shall be allowed, if otherwise allowed pursuant to this Section.

24 (4) The commissioner shall timely create and publish a list of assuming
25 insurers that have satisfied the conditions set forth in this Subsection and to which
26 cessions shall be granted credit in accordance with this Subsection. The
27 commissioner may add an assuming insurer to the list if an NAIC accredited
28 jurisdiction has added the assuming insurer to a list of the assuming insurers or if,
29 upon initial eligibility, the assuming insurer submits the information to the

1 commissioner as required pursuant to Subparagraph(1)(d) of this Subsection and
2 complies with any additional requirements that the commissioner may impose by
3 regulation, except to the extent that those requirements conflict with an applicable
4 covered agreement.

5 (5) If the commissioner determines that an assuming insurer no longer meets
6 one or more of the requirements of this Subsection, the commissioner may revoke
7 or suspend the eligibility of the assuming insurer for recognition under this
8 Subsection in accordance with procedures set forth in regulations.

9 (a) While an assuming insurer's eligibility is suspended, no reinsurance
10 agreement issued, amended, or renewed after the effective date of the suspension
11 qualifies for credit except to the extent that the assuming insurer's obligations under
12 the contract are secured in accordance with R.S. 22:652.

13 (b) If an assuming insurer's eligibility is revoked, no credit for reinsurance
14 may be granted after the effective date of the revocation with respect to any
15 reinsurance agreements entered into by the assuming insurer, including reinsurance
16 agreements entered into prior to the date of revocation, except to the extent that the
17 assuming insurer's obligations under the contract are secured in a form acceptable
18 to the commissioner and consistent with the provisions of R.S. 22:652.

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

23 (7) Nothing in this Subsection shall limit or, in any way, alter the capacity
24 of parties to a reinsurance agreement to agree on requirements for security or other
25 terms in that reinsurance agreement, except as expressly prohibited by this Subpart
26 or other applicable law or regulation.

27 (8)(a) The commissioner may grant credit pursuant to this Subsection only
28 for reinsurance agreements entered into, amended, or renewed on or after the
29 effective date of this Subsection and only with respect to losses incurred and reserves

1 reported on or after the date on which the assuming insurer has met all eligibility
2 requirements pursuant to Paragraph (1) of this Subsection or the effective date of the
3 new reinsurance agreement, amendment, or renewal, whichever is later.

4 (b) This Paragraph does not alter or impair a ceding insurer's right to take
5 credit for reinsurance, to the extent that credit is not available pursuant to this
6 Subsection, as long as the reinsurance qualifies for credit pursuant to any other
7 applicable provision of this Subpart.

8 (9) Nothing in this Subsection authorizes an assuming insurer to withdraw
9 or reduce the security provided under any reinsurance agreement except as permitted
10 by the terms of the agreement.

11 (10) Nothing in this Subsection limits, or in any way alters the capacity of
12 parties to any reinsurance agreement to renegotiate the agreement.

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

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

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

23 (i) 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 (ii) 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 (b) The provisions of Items (a)(i) and (ii) of this Paragraph shall not be
5 construed to conflict with or override the obligation of the parties to a reinsurance
6 agreement to arbitrate their disputes, if such an obligation is created in the
7 reinsurance agreement.

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

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

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

18 (1) The ceding insurer shall not take credit for such reserves unless the
19 insurer accepting the reinsurance meets the requirements set forth in this Section as
20 valid assuming insurers.

21 (2) The commissioner shall not allow credit to any ceding insurer for
22 reinsurance, as an admitted asset or as a deduction from liability, unless the
23 reinsurance shall be payable, in the event of insolvency of the ceding insurer, to its
24 liquidator or receiver on the basis of the claim or claims allowed against the
25 insolvent ceding insurer by any court of competent jurisdiction or any justice or
26 judge thereof, or by any receiver or liquidator having authority to determine and
27 allow such claims, except either where the reinsurance contract with the consent of
28 the direct insured or insureds specifically provides another payee of such reinsurance
29 in the event of the insolvency of the ceding insurer, or when the assuming insurer

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

5 (3) The commissioner shall not permit credit for reinsurance unless the
6 assuming insurer has been doing business in its country of domicile for at least three
7 years, or is an affiliate of an insurer or reinsurer that has been doing business in its
8 country of domicile for at least three years, unless the commissioner, for good cause
9 shown, waives this three-year operating requirement by rule or regulation.

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

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

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

27 (3) If the commissioner with regulatory oversight determines that the assets
28 of the trust fund or any part thereof are not necessary to satisfy the claims of the
29 United States ceding insurers of the grantor of the trust, the assets or part thereof

1 shall be returned by the commissioner with regulatory oversight to the trustee for
2 distribution in accordance with the trust agreement.

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

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

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

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

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

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

20 (2) While a reinsurer's accreditation or certification is suspended, no
21 reinsurance contract issued or renewed after the effective date of the suspension
22 qualifies for credit except to the extent that the reinsurer's obligations under the
23 contract are secured in accordance with R.S. 22:652. If a reinsurer's accreditation
24 or certification is revoked, no credit for reinsurance may be granted after the
25 effective date of the revocation, except to the extent that the reinsurer's obligations
26 under the contract are secured in accordance with the provisions of Paragraph (E)(5)
27 of this Section or in accordance with R.S. 22:652.

28 ~~K. L.~~(1) A ceding insurer shall take steps to manage its reinsurance
29 recoverables proportionate to its own book of business. A domestic ceding insurer

1 shall notify the commissioner within thirty days after reinsurance recoverables from
 2 any single assuming insurer, or group of affiliated insurers, exceeds fifty percent of
 3 the domestic ceding insurer's last reported surplus to policyholders, or after it is
 4 determined that reinsurance recoverables from any single assuming insurer, or group
 5 of affiliated assuming insurers, is likely to exceed this limit. The notification shall
 6 demonstrate that the exposure is safely managed by the domestic ceding insurer.

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

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)]

HB 247 Engrossed

2020 Regular Session

Green

Abstract: Requires the commissioner of insurance to allow credit for reinsurance when the reinsurance is ceded to a foreign and alien reinsurer that meets certain requirements

Present law requires the commissioner of insurance to allow a credit for reinsurance to a domestic ceding insurer as either an asset or a reduction in liability if the reinsurer satisfies the requirements of present law.

Proposed law retains present law but adds additional requirements for foreign and alien reinsurers, including the following major changes:

- (1) Requires the reinsurer to have a head office, be domiciled in, and be licensed in a reciprocal jurisdiction.
- (2) Defines "reciprocal jurisdiction".
- (3) Requires the reinsurer to have and maintain minimum capital and surplus, as calculated by its domiciliary jurisdiction, in an amount to be set forth in regulation.
- (4) Requires the reinsurer to have and maintain a minimum solvency or capital ratio, to be set forth in regulation.

- (5) Requires the reinsurer: to provide a prompt written explanation to the commissioner if it fails to meet the requirements, to consent to the jurisdiction of this state and to the commissioner agent for service of process, to consent in writing to pay all final judgments obtained by a ceding insurer, to include a requirement in all reinsurance agreements that the reinsurer provide security equal to 100% of the reinsurer's liabilities attributable to reinsurance ceded pursuant to that reinsurance agreement in the event the reinsurer resists enforcement of an enforceable final judgment, to provide confirmation that it is not currently participating in any solvent scheme of arrangement with La. ceding insurers, to provide notice to the commissioner and the ceding insurer if the reinsurer enters into such a solvent scheme of arrangement, and to provide security equal to 100% of the reinsurer's liabilities if it enters into such a solvent scheme of arrangement.
- (6) Requires the reinsurer to promptly pay claims under reinsurance agreements.
- (7) Requires the reinsurer's supervisory authority to provide annual confirmation to the commissioner that it complies with the proposed jurisdictional, capital, surplus, and solvency requirements.
- (8) Requires the commissioner to timely publish a list of reciprocal jurisdictions subject to certain provisions.
- (9) Requires the commissioner to timely publish a list of reinsurers that have satisfied the conditions of proposed law.
- (10) Authorizes the commissioner to suspend or revoke the reinsurer's eligibility for recognition under proposed law.
- (11) Authorizes a ceding insurer to obtain an order requiring the reinsurer to post security for all outstanding ceded liabilities if the reinsurer is subject to a legal process of rehabilitation, liquidation, or conservation.
- (12) Provides that credits pursuant to proposed law are only applicable to reinsurance agreements entered into, amended, or renewed on or after the effective date of this Act.

Present law requires the commissioner to allow credit for reinsurance when the reinsurance is ceded to a reinsurer not meeting the requirements of present law, but only for risks located in jurisdictions where the reinsurance is required by the law of that jurisdiction.

Proposed law retains present law, but adds that the reinsurer shall meet the requirements of proposed law.

Proposed law makes technical and organizational changes.

(Amends R.S. 22:651(A), (B), (C)(intro. para.), (E)(intro. para.) and (1), and (F)-(K); Adds R.S. 22:651(L))