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A Bill

HOUSE BILL 1240

By: Representative Lowery
By: Senators M. Pitsch, J. Hendren

For An Act To Be Entitled

AN ACT TO MODIFY THE ARKANSAS CREDIT FOR REINSURANCE
LAW; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE ARKANSAS CREDIT FOR
REINSURANCE LAW; AND TO DECLARE AN
EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-62-305 is amended to read as follows:

23-62-305. Credit allowed a domestic ceding insurer.

(a)(1)(A) A domestic ceding insurer shall be allowed credit for reinsurance as an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (a)(4) and (5) of this section and subsections (b)-(f) of this section.

(B) The Insurance Commissioner may adopt rules under § 23-62-308(b) to implement this section and specify additional requirements relating to:

(i) The valuation of assets or reserve credits;
(ii) The amount and forms of security supporting reinsurance arrangements as described in § 23-62-308(b); and
(iii) The circumstances in which credit of a noncomplying assuming insurer shall be reduced or eliminated.

(2) Credit shall be allowed under subdivisions (a)(4) and (5) of



~~this section or~~ subsection (b), ~~subsection (e), or subsection (d)~~ of this section only for cessions of the kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in:

(A) Its state of domicile; or

(B) In the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.

(3) Credit shall be allowed under ~~subsection (d) or subsection (e)~~ subsection (b) or subsection (c) of this section only if the applicable requirements of ~~subsection (i)~~ subsection (g) of this section have been satisfied.

~~(b)(4)~~ (4) Credit shall be allowed if the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

~~(e)(1)(5)(A)~~ (5)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Insurance Commissioner as a reinsurer in this state.

~~(2)(B)~~ (B) To be eligible for accreditation by the Insurance Commissioner under ~~subdivision (e)(1)~~ of this section, a reinsurer shall:

~~(A)(i)~~ (i) File with the Insurance Commissioner evidence of its submission to this state's jurisdiction;

~~(B)(ii)~~ (ii) Submit to this state's authority to examine its books and records;

~~(C)(iii)~~ (iii) Be licensed to transact insurance or reinsurance in at least one (1) state, or, in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one (1) state;

~~(D)(iv)~~ (iv) File annually with the Insurance Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

~~(E)(i)(v)(a)~~ (v)(a) Demonstrate to the satisfaction of the Insurance Commissioner that the reinsurer has adequate financial capacity to meet the reinsurer's reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

~~(ii)(b)~~ (b) A reinsurer is considered to meet the

requirements under ~~subdivision (e)(2)(E)(i)~~ subdivision (a)(5)(B)(v)(a) of this section if, at the time of application to the Insurance Commissioner, the reinsurer maintains a surplus regarding policyholders in an amount not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Insurance Commissioner within ninety (90) days of applying.

~~(d)(1)(b)(1)~~ Credit shall be allowed if the reinsurance is ceded to an assuming insurer that is domiciled in, or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this subchapter and the assuming insurer or United States branch of an alien assuming insurer:

(A) Maintains a surplus regarding policyholders in an amount not less than twenty million dollars (\$20,000,000); and

(B) Submits to the authority of this state to examine its books and records.

(2) The requirement of subdivision ~~(d)(1)(A)~~ (b)(1)(A) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

~~(e)(1)(A)~~ (c)(1)(A) Credit shall be allowed if the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in § 23-62-307(b), for the payment of the valid claims of its United States ceding insurers, their assigns, and their successors in interest.

(B) To enable the Insurance Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the Insurance Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers.

(C) The assuming insurer shall submit to examination of its books and records by the Insurance Commissioner and bear the expense of examination.

(2) A credit for reinsurance shall not be granted under this section unless the form of the trust and any amendments to the trust have been approved by:

(A) The insurance commissioner of the state where the

trust is domiciled; or

(B) The insurance commissioner of another state who, under the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(3)(A) The form of the trust and any trust amendments also shall be filed with the insurance commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

(B) The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

(C) The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and their successors in interest.

(D) The trust and the assuming insurer shall be subject to examination as determined by the Insurance Commissioner.

(4)(A) 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.

(B) By February 28 of each year, the trustees of the trust shall:

(i) Report to the Insurance Commissioner in writing the balance of the trust;

(ii) List the trust's investments at the preceding year's end; and

(iii) Certify:

(a) The date of termination of the trust, if so planned; or

(b) That the trust will not expire before the following December 31.

~~(f)~~(d) An assuming insurer is subject to the requirements, as applicable, for the following categories:

(1)(A) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers.

(B) Except as provided in subdivision ~~(f)~~(2) (d)(2) of

this section, the assuming insurer shall maintain a trusteed surplus of at least twenty million dollars (\$20,000,000);

(2)(A) The commissioner with principal regulatory oversight of the trust may authorize a reduction in the assuming insurer's required trusteed surplus if the Insurance Commissioner finds that:

(i) The assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) years; and

(ii) In light of reasonably foreseeable adverse loss development and based on an assessment of the risk, the assuming insurer's new required surplus level is adequate to protect United States ceding insurers, policyholders, and claimants.

(B)(i) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows.

(ii) The risk assessment shall consider any applicable material risk factors, including without limitation:

(a) The lines of business involved;

(b) The stability of the incurred loss

estimates; and

(c) The effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(C) The minimum required trusteed surplus shall not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

(3)(A) In the case of a group, including incorporated and individual unincorporated underwriters:

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

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this act, the trust shall consist of a trusteed account in an amount not less

than the underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) In addition to the trusts under this subdivision ~~(f)(3)(A)~~ (d)(3)(A), the group shall maintain in trust a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

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

(C) Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Insurance Commissioner:

(i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or

(ii) If a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group; and

(4) In the case of a group of incorporated underwriters under common administration, the group shall:

(A) Have continuously transacted an insurance business outside the United States for at least three (3) years immediately before making application for accreditation;

(B) Maintain aggregate policyholders' surplus of at least ten billion dollars (\$10,000,000,000);

(C) Maintain a trust fund in an amount that is not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group under reinsurance contracts issued in the name of the group;

(D) Maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(E) Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to

the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

~~(g)(1)~~(e)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Insurance Commissioner as a reinsurer in this state and secures its obligations under the requirements of this section.

(2) In order to be eligible for certification, the assuming insurer shall:

(A) Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Insurance Commissioner under subdivision ~~(g)(4)~~(e)(4) of this section;

(B) Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by rule adopted by the commissioner;

(C) Maintain financial strength ratings from at least two (2) rating agencies deemed acceptable as determined by rule adopted by the commissioner;

(D) Agree to:

(i) Submit to the jurisdiction of this state;

(ii) Appoint the Insurance Commissioner as its agent for service of process in this state;

(iii) Provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment; and

(iv) Meet any additional filing requirements as determined by rule adopted by the Insurance Commissioner concerning an initial application for certification and on an ongoing basis; and

(E) Satisfy any other requirements for certification deemed necessary by rule adopted by the Insurance Commissioner.

(3)(A) A certified reinsurer may be an association, including an incorporated underwriter and an individual unincorporated underwriter.

(B) In order to be eligible for certification, an association that meets the requirements in subdivision ~~(g)(2)~~ (e)(2) of this

section shall:

(i) Satisfy the association's minimum capital and surplus requirements through the capital and surplus equivalents or net of liabilities of the association and the association's members, including a joint central fund that may be applied to any unsatisfied obligation of the association or any of the association's members, in an amount determined by the Insurance Commissioner to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Insurance Commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the association.

(4)(A) The Insurance Commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer that is licensed and domiciled in the jurisdictions is eligible to be considered for certification by the commissioner as a certified reinsurer.

(B) In order to determine whether or not the domiciliary jurisdiction of an assuming insurer that is not in the United States is eligible to be recognized as a qualified jurisdiction, the Insurance Commissioner shall:

(i) Evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis; and

(ii) Consider the rights, benefits, and the extent of reciprocal recognition afforded by the foreign jurisdiction to reinsurers licensed and domiciled in the United States.

(C) A qualified jurisdiction shall agree to share information and cooperate with the Insurance Commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

(D) A jurisdiction shall not be recognized as a qualified jurisdiction if the Insurance Commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

(E) Additional factors may be considered in the discretion of the Insurance Commissioner.

(5)(A) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process.

(B) The Insurance Commissioner shall consider this list in determining qualified jurisdictions.

(C) If the Insurance Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Insurance Commissioner shall provide thoroughly documented justification according to criteria to be developed by promulgation of rules by the Insurance Commissioner.

(D) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(E) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Insurance Commissioner has the discretion to suspend the reinsurer's certification indefinitely, instead of revoking the certification.

(6)(A) The Insurance Commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Insurance Commissioner.

(B) The Insurance Commissioner shall publish a list of all certified reinsurers and their ratings.

(7)(A) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this section at a level consistent with its rating, as determined in rules promulgated by the Insurance Commissioner.

(B) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified

reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Insurance Commissioner and consistent with § 23-62-306 or, in the case of a multibeneficiary trust, according to ~~subsection (e)~~ subsection (c) of this section.

(C)(i) If a certified reinsurer maintains a trust to fully secure its obligations subject to ~~subsection (e)~~ subsection (c) of this section and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this section.

(ii) The certified reinsurer shall agree that the certified reinsurer has bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each of the trust accounts, to fund, upon termination of any of the trust accounts, out of the remaining surplus of the trust any deficiency of any other of the trust accounts.

(D) The minimum trusteed surplus requirements under ~~subsection (e)~~ subsection (d) of this section are not applicable to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this section, except that the trust shall maintain a minimum trusteed surplus of ten million dollars (\$10,000,000).

(E) For obligations incurred by a certified reinsurer under this section, if the security is insufficient, the Insurance Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit if the commissioner finds a material risk of nonpayment of the certified reinsurer's obligations when due.

(F)(i) For purposes of this section, a certified reinsurer whose certification is terminated shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

(ii) As used in ~~subdivision (g)(7)(F)(i)~~ subdivision (e)(7)(F)(i) of this section, "terminated" means revocation, suspension, voluntary surrender, and inactive status.

(iii) If the Insurance Commissioner continues to assign a higher rating under this section to a certified reinsurer, the

requirement to secure one hundred percent (100%) of a certified reinsurer's obligations if certification is terminated does not apply to a certified reinsurer in inactive status or to a reinsurer under a suspended certification.

(8) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the Insurance Commissioner may defer to that jurisdiction's certification and to the assigned rating, and then the assuming insurer shall be considered a certified reinsurer in this state.

(9)(A) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business.

(B) An inactive certified reinsurer shall continue to comply with the requirements of this section.

(C) The Insurance Commissioner shall assign a rating that accounts for the reasons the reinsurer does not assume new business in this state.

~~(h)(f)(1)(A)~~ Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~not meeting the requirements of subsection (b), subsection (c), subsection (d), subsection (e), or subsection (g) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction~~ that:

(i) Either:

(a) Has a head officer in a reciprocal jurisdiction; or

(b) Is domiciled in a reciprocal jurisdiction, as applicable; and

(ii) Is licensed in a reciprocal jurisdiction.

(B) As used in subdivision (f)(1)(A) of this section, "reciprocal jurisdiction" means a jurisdiction that:

(i)(a) Is a foreign jurisdiction outside the United States that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union.

(b) As used in subdivision (f)(1)(B)(i)(a) of this section, "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, as it existed on January 1, 2021, that addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) Is a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program; or

(iii) Is a qualified jurisdiction, as determined by the Insurance Commissioner under subdivision (f)(2)(B) of this section, that:

(a) Is not otherwise described in subdivision (f)(1)(A)(i) or subdivision (f)(1)(A)(ii) of this section; and

(b) Meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Insurance Commissioner by rule.

(C) An assuming insurer shall have and maintain on an ongoing basis:

(i) A minimum solvency or capital ratio, as applicable, that is established by rule;

(ii) The minimum capital and surplus, or its equivalent, calculated according to the methodology of the jurisdiction of the assuming insurer, in an amount to be stated by rule;

(iii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, the minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts determined by the Insurance Commissioner through rule; and

(iv) If an assuming insurer is an association, including incorporated and individual unincorporated underwriters, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(D) An assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to rule, to provide:

(i) A prompt written notice and explanation to the Insurance Commissioner if the assuming insurer falls below the minimum requirements stated in this subsection or if any regulatory action is taken against it for serious noncompliance with applicable law;

(ii)(a) A statement of consent in writing to the jurisdiction of the courts of this state and to the appointment of the Insurance Commissioner as agent for service of process.

(b) The Insurance Commissioner may require that consent for service of process be provided to the Insurance Commissioner and be included in each reinsurance agreement.

(c) This subdivision (f)(1)(D)(ii) does not limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent these agreements are unenforceable under applicable insolvency or delinquency laws;

(iii) A statement of consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(iv) A statement that each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate;

(v) A statement of confirmation that the assuming insurer is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers; and

(vi)(a) An agreement to notify the ceding insurer and the Insurance Commissioner and to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities to the

ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement.

(b) A security described in subdivision (f)(1)(D)(vi)(a) of this section shall be in a form consistent with subsection (e) of this section, § 23-62-306, and as specified by the Insurance Commissioner by rule.

(E) An assuming insurer or its legal successor shall provide, if requested by the Insurance Commissioner, on behalf of the assuming insurer and any legal predecessors, certain documentation to the Insurance Commissioner, as specified by the Insurance Commissioner by rule.

(F) An assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria stated by the Insurance Commissioner by rule.

(G) An assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31, or at the annual date otherwise reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements stated in subdivisions (f)(1)(C)(i)-(iv) of this section.

(H) This subsection does not preclude an assuming insurer from providing the commissioner with information on a voluntary basis.

(2)(A) The Insurance Commissioner shall timely create and publish a list of reciprocal jurisdictions.

(B)(i) The Insurance Commissioner's list as described in subdivision (f)(2)(A) of this section shall require the Insurance Commission to:

(a) Include any reciprocal jurisdiction as defined in subdivisions (f)(1)(B)(i) and (ii) of this section; and

(b) Consider other reciprocal jurisdictions that are included on the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners.

(ii) The Insurance Commissioner may approve a reciprocal jurisdiction that does not appear on the National Association of Insurance Commissioners list of reciprocal jurisdictions according to criteria adopted by the Insurance Commissioner by rule.

(C)(i) The Insurance Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination

that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, according to a process adopted by rule of the Insurance Commissioner, except that the Insurance Commissioner shall not remove from the list of a reciprocal jurisdiction as defined in subdivisions (f)(1)(B)(i) and (ii) of this section.

(ii) Upon removal of a reciprocal jurisdiction from the list described in subdivision (f)(2)(A) of this section, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed according to this subchapter.

(iii) The Insurance Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions stated in this subsection and to which cessions shall be granted credit according to this subsection.

(iv) The Insurance Commissioner may add an assuming insurer to the list described in subdivision (f)(2)(C)(iii) of this section if a National Association of Insurance Commissioners accredited jurisdiction has added the assuming insurer to a list of assuming insurers or if, upon initial eligibility, the assuming insurer:

(a) Submits the information to the Insurance Commissioner as required under subdivision (f)(1) of this section; and

(b) Complies with any additional requirements that the Insurance Commissioner may impose by rule, except to the extent that the additional requirements conflict with an applicable covered agreement.

(3)(A) If the Insurance Commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements under subdivision (f)(1) of this section, the Insurance Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under subdivision (f)(1) of this section according to the Insurance Commissioner by rule.

(B) While an assuming insurer's eligibility is suspended, a reinsurance agreement issued, amended, or renewed after the effective date of the suspension shall not qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured according to § 23-62-306.

(C) If an assuming insurer's eligibility is revoked, credit for reinsurance shall not be granted after the effective date of the

revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Insurance Commissioner and consistent with § 23-62-306.

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

(E) This section does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this subchapter or other applicable law or rule.

(F) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the effective date of this act, and only with respect to losses incurred and reserves reported on or after the later of:

(i) The date on which the assuming insurer has met all eligibility requirements under subdivision (f)(1) of this section; and

(ii) The effective date of the new reinsurance agreement, amendment, or renewal.

(4) This section does not:

(A) Alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subdivision (f)(3)(F), as long as the reinsurance qualifies for credit under any other applicable provision of § 23-62-301 et seq.

(B) Allow an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement; or

(C) Limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of this section but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law, rule, or regulation of that jurisdiction.

~~(i)-(1)(g)(1)~~ If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by ~~subsections (d)-(f)~~ subsections (b)-(d) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(i) Submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(ii) Comply with all requirements necessary to give the court jurisdiction; and

(iii) Abide by the final decision of the court or of any appellate court in the event of an appeal; and

(B) To designate the Insurance Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.

~~(j)(h)~~ If the assuming insurer does not meet the requirements of subsection (a), subsection (b), subsection (c), ~~or subsection (d) of this section, the credit permitted under subsection (d)~~, subsection (e), or subsection (f), ~~or subsection (g) of this section, the assuming insurer~~ shall not be allowed a credit unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by ~~subdivision (e)(3)~~ subdivision (d)(3) of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, then the trustee shall comply with an order of the insurance commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the insurance commissioner with

regulatory oversight all of the assets of the trust fund;

(2) The assets shall be distributed by and claims shall be filed with and valued by the insurance commissioner with regulatory oversight ~~in accordance with~~ according to the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

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

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

~~(k)(1)(i)(1)~~ If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Insurance Commissioner may suspend or revoke the reinsurer's accreditation or certification after notice and an opportunity for a hearing.

(2) The suspension or revocation shall not take effect until after the Insurance Commissioner's order on hearing unless:

(A) The reinsurer waives the right to a hearing; and

(B) The Insurance Commissioner's order is based on:

(i) Regulatory action by the reinsurer's domiciliary jurisdiction;

(ii) The voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under ~~subdivision (g)(8)~~ subdivision (e)(8) of this section; or

(iii) A finding by the commissioner of an emergency that requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(3) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension shall not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured under § 23-62-306.

(4) If a reinsurer's accreditation or certification is revoked,

credit for reinsurance shall not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured under ~~subdivision (g)(7)~~ subdivision (e)(7) of this section or § 23-62-306.

~~(1)(1)(A)(j)(1)(A)~~ (1)(1)(A)(j)(1)(A) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business.

(B) A domestic ceding insurer shall notify the Insurance Commissioner within thirty (30) days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds fifty percent (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 assuming insurers is likely to exceed this limit.

(C) The notification shall demonstrate to the Insurance Commissioner that the exposure is safely managed by the domestic ceding insurer.

(2)(A) A ceding insurer shall take steps to diversify its reinsurance program.

(B) A domestic ceding insurer shall notify the Insurance Commissioner within thirty (30) days after ceding to any single assuming insurer or group of affiliated assuming insurers more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year or after it has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit.

(C) The notification shall demonstrate to the Insurance Commissioner that the exposure is safely managed by the domestic ceding insurer.

SECTION 2. Arkansas Code § 23-62-306(a), concerning the asset or reduction from liability for reinsurance ceded by a domestic insurer to a noncomplying assuming insurer, is amended to read as follows:

(a)(1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 23-62-305 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

(2) The Insurance Commissioner shall promulgate rules necessary to implement this section that address:

- (A) The valuation of assets or reserve credits;
- (B) The amount and forms of security supporting reinsurance arrangements as described in § 23-62-308(b); and
- (C) The circumstances in which credit of a noncomplying assuming insurer shall be reduced or eliminated.

SECTION 3. Arkansas Code § 23-62-308 is amended to read as follows:
23-62-308. Rules.

(a) The Insurance Commissioner may adopt rules implementing this subchapter.

(b) The Insurance Commissioner may adopt rules:

- (1) Applicable to a reinsurance arrangement that relates to:
 - (A) A life insurance policy with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
 - (B) A universal life insurance policy with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
 - (C) A variable annuity with guaranteed death or living benefits;
 - (D) A long-term care insurance policy; or
 - (E) A life or health insurance or annuity product for which the National Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance;

(2) Applicable to a rule adopted under this section may apply to a treaty containing:

- (A) A policy issued on or after January 1, 2015; or
- (B) A policy issued before January 1, 2015, if risk pertaining to the policy is ceded in connection with the treaty on or after January 1, 2015; and

(3) That require a ceding insurer to calculate the amounts or forms of security according to rules promulgated by the Insurance Commissioner.

(c) A rule adopted under this section shall not apply to cessions of an assuming insurer:

(1) That:

(A) Meets the conditions in § 23-62-305(f);

(B) Is certified in this state; or

(C) Maintains at least two hundred fifty million dollars (\$250,000,000) in capital and surplus as determined according to the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, as it existed on January 1, 2021, and as adopted by the Insurance Commissioner by rule, excluding the impact of any permitted or prescribed practice; and

(2) That is licensed in at least:

(A) Twenty-six (26) states; or

(B) Ten (10) states, and licensed or accredited in a total of thirty-five (35) states.

(d) This section does not limit the general authority of the Insurance Commissioner to promulgate rules.

SECTION 4. Arkansas Code § 23-62-309 is amended to read as follows:

23-62-309. Applicability – Reinsurance agreements.

~~Sections 23-62-305—23-62-307 apply~~ This subchapter applies to any a
cession of a reinsurance agreement if that reinsurance agreement has an
inception, anniversary, or renewal date not less than six (6) months after
~~July 22, 2015~~ July 1, 2021.

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
General Assembly of the State of Arkansas that the process for crediting an
insurer for reinsurance is in need of clarification in this state; that
simplifying the procedures to allow an insurer to apply for and receive
credit for reinsurance will provide financial benefit to the citizens of this
state; and that this act is necessary because an insurer that is able to
apply for and process a credit for reinsurance should pass those savings on
to the citizens of this state. Therefore, an emergency is declared to exist,
and this act being necessary for the preservation of the public peace,
health, and safety shall become effective on July 1, 2021.

/s/Lowery

APPROVED: 4/12/21