

1 SB54
2 203371-2
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 04-FEB-20
6 PFD: 01/27/2020

SYNOPSIS: Under existing law, an insurance company may enter into an insurance contract to insure a risk and the insurance company may reinsure the risk with another insurance company. The Insurance Department generally requires a company to maintain reserves and regulates when an insurance company entering into a reinsurance contract with another insurer may receive credit against its otherwise required reserves.

This bill would make Alabama's law regulating reinsurers and the credit an insurer may apply against its otherwise required reserves substantially similar to the current version of the Credit for Reinsurance Model Law developed by the National Association of Insurance Commissioners.

A BILL
TO BE ENTITLED
AN ACT

1 Relating to insurance; to implement the reinsurance
2 collateral provisions of the covered agreements that were
3 entered into between the United States and the European Union
4 and the United Kingdom, and for those purposes to amend
5 Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19,
6 Code of Alabama 1975, and to add Sections 27-5B-8.1 and
7 27-5B-20 to the Code of Alabama 1975.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 27-5B-3, 27-5B-9, 27-5B-11,
10 27-5B-14, and 27-5B-19, Code of Alabama 1975, are amended to
11 read as follows:

12 "§27-5B-3.

13 "(a) Credit for reinsurance shall be allowed a
14 domestic ceding insurer as either an asset or a reduction from
15 liability on account of reinsurance ceded only when the
16 reinsurer meets the requirements of Section 27-5B-4, 27-5B-5,
17 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, or 27-5B-9.

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

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

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

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

26 "(c) Credit shall be allowed under ~~Sections~~ Section
27 27-5B-4, 27-5B-5, or 27-B5-6 only as respects cessions of

1 those kinds or classes of business which the assuming insurer
2 is licensed or otherwise permitted to write or assume in its
3 state of domicile or, in the case of a U.S. branch of an alien
4 assuming insurer, in the state through which it is entered and
5 licensed to transact insurance or reinsurance. Credit shall be
6 allowed under Section 27-5B-6 or 27-5B-7 only if the
7 applicable requirements of Section 27-5B-10 have been
8 satisfied.

9 "§27-5B-9.

10 "Credit shall be allowed when the reinsurance is
11 ceded to an assuming insurer not meeting the requirements of
12 Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, ~~or~~ 27-5B-8, or
13 27-5B-8.1, but only as to the insurance of risks located in
14 jurisdictions where the reinsurance is required by applicable
15 law or regulation of that jurisdiction.

16 "§27-5B-11.

17 "If the assuming insurer does not meet the
18 requirements of Section 27-5B-4, 27-5B-5, ~~or~~ 27-5B-6, or
19 27-5B-8.1, the credit permitted by Section 27-5B-7 or 27-5B-8
20 shall not be allowed unless the assuming insurer agrees in the
21 trust agreements to the following conditions:

22 "(1) Notwithstanding any other provisions in the
23 trust instrument, if the trust fund is inadequate because it
24 contains an amount less than the amount required by subsection
25 (c) of Section 27-5B-7, or if the grantor of the trust has
26 been declared insolvent or placed into receivership,
27 rehabilitation, liquidation, or similar proceedings under the

1 laws of its state or country of domicile, the trustee shall
2 comply with an order of the commissioner with regulatory
3 oversight over the trust or with an order of a court of
4 competent jurisdiction directing the trustee to transfer to
5 the commissioner with regulatory oversight all of the assets
6 of the trust fund.

7 "(2) The assets shall be distributed by and claims
8 shall be filed with and valued by the commissioner with
9 regulatory oversight in accordance with the laws of the state
10 in which the trust is domiciled that are applicable to the
11 liquidation of domestic insurance companies.

12 "(3) If the commissioner with regulatory oversight
13 determines that the assets of the trust fund or any part
14 thereof are not necessary to satisfy the claims of the U.S.
15 ceding insurers of the grantor of the trust, the assets or
16 part thereof shall be returned by the commissioner with
17 regulatory oversight to the trustee for distribution in
18 accordance with the trust agreement.

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

22 "§27-5B-14.

23 "(a) An asset or a reduction from liability for the
24 reinsurance ceded by a domestic insurer to an assuming insurer
25 not meeting the requirements of Section 27-5B-3, 27-5B-4,
26 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, 27-5B-9,
27 27-5B-10, 27-5B-11, 27-5B-12, or 27-5B-13 shall be allowed in

1 an amount not exceeding the liabilities carried by the ceding
2 insurer.

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

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

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

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

13 "(c) The reduction shall be in the amount of funds
14 held by or on behalf of the ceding insurer, including funds
15 held in trust for the ceding insurer, under a reinsurance
16 contract with the assuming insurer as security for the payment
17 of obligations thereunder, if the security is held in the
18 United States subject to withdrawal solely by, and under the
19 exclusive control of, the ceding insurer; or, in the case of a
20 trust, held in a qualified U.S. financial institution, as
21 defined in subsection (b) of Section 27-5B-15. This security
22 may be in the form of any of the following:

23 "(1) Cash.

24 "(2) Securities listed by the Securities Valuation
25 Office of the National Association of Insurance Commissioners,
26 including those deemed exempt from filing as defined by the

1 Purposes and Procedures Manual of the Securities Valuation
2 Office, and qualifying as admitted assets.

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

10 "(4) Letters of credit meeting applicable standards
11 of issuer acceptability as of the dates of their issuance (or
12 confirmation) shall, notwithstanding the issuing (or
13 confirming) institution's subsequent failure to meet
14 applicable standards of issuer acceptability, continue to be
15 acceptable as security until their expiration, extension,
16 renewal, modification, or amendment, whichever first occurs.

17 "(5) Any other form of security acceptable to the
18 commissioner.

19 "§27-5B-19.

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

22 "(b) In addition to the authority of the
23 commissioner pursuant to subsection (a), the commissioner may
24 adopt rules applicable to reinsurance arrangements as provided
25 in this subsection.

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

1 "a. Life insurance policies with guaranteed nonlevel
2 gross premiums or guaranteed nonlevel benefits.

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

6 "c. Variable annuities with guaranteed death or
7 living benefits.

8 "d. Long-term care insurance policies.

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

12 "(2) A rule adopted pursuant to paragraph a. or b.
13 of subdivision (1) may apply to any treaty containing (i)
14 policies issued on or after January 1, 2015, or (ii) policies
15 issued prior to January 1, 2015, if risk pertaining to the
16 pre-2015 policies is ceded in connection with the treaty, in
17 whole or in part, on or after January 1, 2015, or treaties
18 meeting both items (i) and (ii).

19 "(3) A rule adopted pursuant to this subsection may
20 require the ceding insurer, in calculating the amounts or
21 forms of security required to be held under rules adopted
22 under this authority, to use the valuation manual adopted by
23 the NAIC as described in subdivision (1) of subsection (b) of
24 Section 27-36A-15, including all amendments adopted by the
25 NAIC and in effect on the date as of which the calculation is
26 made, to the extent applicable.

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

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

5 "b. Is certified in this state.

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

12 "1. Licensed in at least 26 states.

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

15 "(5) The authority to adopt rules pursuant to this
16 subsection does not limit the commissioner's general authority
17 to adopt rules pursuant to subsection (a)."

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

20 §27-5B-8.1. Reinsurer domiciled in a reciprocal
21 jurisdiction.

22 (a) Credit shall be allowed when the reinsurance is
23 ceded to an assuming insurer meeting each of the following
24 conditions:

25 (1) The assuming insurer shall have its head office
26 or be domiciled in, as applicable, and be licensed in a

1 reciprocal jurisdiction. A reciprocal jurisdiction is a
2 jurisdiction that meets one of the following:

3 a. A non-U.S. jurisdiction that is subject to an
4 in-force covered agreement with the United States, each within
5 its legal authority, or, in the case of a covered agreement
6 between the United States and European Union, is a member
7 state of the European Union. For purposes of this subsection,
8 a covered agreement is an agreement entered into pursuant to
9 the Dodd-Frank Wall Street Reform and Consumer Protection Act,
10 31 U.S.C. §§313 and 314, that is currently in effect or in a
11 period of provisional application and addresses the
12 elimination, under specified conditions, of collateral
13 requirements as a condition for entering into any reinsurance
14 agreement with a ceding insurer domiciled in this state or for
15 allowing the ceding insurer to recognize credit for
16 reinsurance.

17 b. A U.S. jurisdiction that meets the requirements
18 for accreditation under the NAIC financial standards and
19 accreditation program.

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

26 (2) The assuming insurer shall have and maintain, on
27 an ongoing basis, minimum capital and surplus, or its

1 equivalent, calculated according to the methodology of its
2 domiciliary jurisdiction, in an amount to be set forth in
3 regulation. If the assuming reinsurer is an association,
4 including incorporated and individual unincorporated
5 underwriters, it shall have and maintain on an ongoing basis,
6 minimum capital and surplus equivalents, net of liabilities,
7 calculated according to the methodology applicable in its
8 domiciliary jurisdiction, and a central fund containing a
9 balance in amounts to set forth by rule.

10 (3) The assuming insurer shall have and maintain, on
11 an ongoing basis, a minimum solvency or capital ratio, as
12 applicable, which shall be set forth by rule. If the assuming
13 insurer is an association, including incorporated and
14 individual unincorporated underwriters, it shall have and
15 maintain, on an ongoing basis, a minimum solvency or capital
16 ratio in the reciprocal jurisdiction where the assuming
17 insurer has its head office or is domiciled, as applicable,
18 and is also licensed.

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

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

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

11 c. The assuming insurer shall consent in writing to
12 pay all final judgments, wherever enforcement is sought,
13 obtained by a ceding insurer or its legal successor, that have
14 been declared enforceable in the jurisdiction where the
15 judgment was obtained.

16 d. Each reinsurance agreement shall include a
17 provision requiring the assuming insurer to provide security
18 in an amount equal to 100 percent of the assuming insurer's
19 liabilities attributable to reinsurance ceded pursuant to that
20 agreement if the assuming insurer resists enforcement of a
21 final judgment that is enforceable under the law of the
22 jurisdiction in which it was obtained or a properly
23 enforceable arbitration award, whether obtained by the ceding
24 insurer or by its legal successor on behalf of its resolution
25 estate.

26 e. The assuming insurer shall confirm that it is not
27 presently participating in any solvent scheme of arrangement

1 which involves this state's ceding insurers, and agrees to
2 notify the ceding insurer and the commissioner and to provide
3 security in an amount equal to 100 percent of the assuming
4 insurer's liabilities to the ceding insurer should the
5 assuming insurer enter into such a solvent scheme of
6 arrangement. The security shall be in a form consistent with
7 Sections 27-5B-8 and 27-5B-14 and as specified by the
8 commissioner by rule.

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

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

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

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

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

1 (2) A list of reciprocal jurisdictions is published
2 through the NAIC Committee Process. The commissioner's list
3 shall include any reciprocal jurisdiction, as defined in
4 paragraph a. or b. of subdivision (1) of subsection (a), and
5 shall consider any other reciprocal jurisdiction included on
6 the NAIC list. The commissioner may approve a jurisdiction
7 that does not appear on the NAIC list of reciprocal
8 jurisdictions in accordance with criteria to be developed
9 under rules adopted by the commissioner.

10 (3) The commissioner may remove a jurisdiction from
11 the list of reciprocal jurisdictions upon a determination that
12 the jurisdiction no longer meets the requirements of a
13 reciprocal jurisdiction in accordance with a process set forth
14 in rules adopted by the commissioner, except that the
15 commissioner shall not remove from the list a reciprocal
16 jurisdiction as defined in paragraph a. or b. of subdivision
17 (1) of subsection (a). Upon removal of a reciprocal
18 jurisdiction from this list, credit for reinsurance ceded to
19 an assuming insurer which has its home office or is domiciled
20 in that jurisdiction shall be allowed, if otherwise allowed
21 pursuant to this chapter.

22 (c) The commissioner shall timely create and publish
23 a list of assuming insurers that have satisfied the conditions
24 set forth in this section and to which cessions shall be
25 granted credit in accordance with this section. The
26 commissioner may add an assuming insurer to the list if an
27 NAIC accredited jurisdiction has added the assuming insurer to

1 a list of assuming insurers or if, upon initial eligibility,
2 the assuming insurer submits the information to the
3 commissioner as required under subdivision (4) of subsection
4 (a) and complies with any additional requirements that the
5 commissioner may impose by rule, except to the extent that
6 they conflict with an applicable covered agreement.

7 (d) If the commissioner determines that an assuming
8 insurer no longer meets one or more of the requirements under
9 this section, the commissioner may revoke or suspend the
10 eligibility of the assuming insurer for recognition under this
11 section in accordance with procedures set forth by rule.

12 (1) While an assuming insurer's eligibility is
13 suspended, no reinsurance agreement issued, amended, or
14 renewed after the effective date of the suspension qualifies
15 for credit except to the extent that the assuming insurer's
16 obligations under the contract are secured in accordance with
17 Section 27-5B-14.

18 (2) If an assuming insurer's eligibility is revoked,
19 no credit for reinsurance may be granted after the effective
20 date of the revocation with respect to any reinsurance
21 agreements entered into by the assuming insurer, including
22 reinsurance agreements entered into prior to the date of
23 revocation, except to the extent that the assuming insurer's
24 obligations under the contract are secured in a form
25 acceptable to the commissioner and consistent with Section
26 27-5B-14.

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

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

12 (g) (1) Credit may be taken under this section only
13 for reinsurance agreements entered into, amended, or renewed
14 on or after the effective date of the act adding this section,
15 and only with respect to losses incurred and reserves reported
16 on or after the later of a. the date on which the assuming
17 insurer has met all eligibility requirements pursuant to
18 subsection (a), and b. the effective date of the new
19 reinsurance agreement, amendment, or renewal.

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

25 (3) Nothing in this section shall authorize an
26 assuming insurer to withdraw or reduce the security provided

1 under any reinsurance agreement except as permitted by the
2 terms of the agreement.

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

6 §27-5B-20. Reinsurance Agreements Affected.

7 The amendments of this chapter and the additions to
8 this chapter by the act adding this section shall apply to all
9 cessions after the effective date of the act adding this
10 section under reinsurance agreements that have an inception,
11 anniversary, or renewal date not less than six months after
12 the effective date of the act adding this section.

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