

ACT No. 179

2020 Regular Session

HOUSE BILL NO. 247

BY REPRESENTATIVE GREEN

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
21 Subsection B or C of this Section pertaining only to cessions of those kinds or
22 classes of business that the assuming insurer is licensed or otherwise permitted to

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

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

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

13 * * *

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

17 ~~(1)~~ To be eligible for certification, the assuming insurer shall meet the
 18 following requirements:

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

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

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

28 (d) The assuming insurer shall agree to submit to the jurisdiction of this
 29 state, appoint the commissioner as its agent for service of process in this state, and
 30 agree to provide security for one hundred percent of the assuming insurer's liabilities

1 the terms and conditions of in-force covered agreements, as specified by the
2 commissioner pursuant to regulation.

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

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

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

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

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

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

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

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

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

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

23 (g) The assuming insurer's supervisory authority confirms to the
24 commissioner on an annual basis, as of the preceding December thirty-first or at the
25 annual date otherwise statutorily reported to the reciprocal jurisdiction, that the
26 assuming insurer complies with the requirements set forth in Subparagraphs (b) and
27 (c) of this Paragraph.

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

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

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

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

17 (4) The commissioner shall timely create and publish a list of assuming
18 insurers that have satisfied the conditions set forth in this Subsection and to which
19 cessions shall be granted credit in accordance with this Subsection. The
20 commissioner may add an assuming insurer to the list if an NAIC-accredited
21 jurisdiction has added the assuming insurer to a list of the assuming insurers or if,
22 upon initial eligibility, the assuming insurer submits the information to the
23 commissioner as required pursuant to Subparagraph (1)(d) of this Subsection and
24 complies with any additional requirements that the commissioner may impose by
25 regulation, except to the extent that those requirements conflict with an applicable
26 covered agreement.

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

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

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

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

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

19 (8)(a) Credit may be taken pursuant to this Subsection only for reinsurance
20 agreements entered into, amended, or renewed on or after the effective date of this
21 Subsection and only with respect to losses incurred and reserves reported on or after
22 the date on which the assuming insurer has met all eligibility requirements pursuant
23 to Paragraph (1) of this Subsection or the effective date of the new reinsurance
24 agreement, amendment, or renewal, whichever is later.

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

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

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

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

10 ~~G. H.~~ H. If the assuming insurer is not ~~authorized~~, accredited, or certified or
11 does not hold a certificate of authority to transact insurance or reinsurance in this
12 state, the commissioner shall not allow the credit permitted by Subsection D of this
13 Section unless each of the following criteria ~~are~~ is met:

14 (1)(a) The assuming insurer provides the following in all reinsurance
15 agreements:

16 (i) That in the event of the failure of the assuming insurer to perform its
17 obligations under the terms of the reinsurance agreement, the assuming insurer, at
18 the request of the ceding insurer, shall submit to the jurisdiction of any court of
19 competent jurisdiction in any state of the United States, comply with all requirements
20 necessary to give such court jurisdiction, and abide by the final decision of the
21 district court or appellate court.

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

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

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

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

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

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

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

27 (3) The commissioner shall not permit credit for reinsurance unless the
28 assuming insurer has been doing business in its country of domicile for at least three
29 years, or is an affiliate of an insurer or reinsurer that has been doing business in its

1 country of domicile for at least three years, unless the commissioner, for good cause
2 shown, waives this three-year operating requirement by rule or regulation.

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

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

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

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

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

27 F. K. If an accredited or certified reinsurer ceases to meet the requirements
28 for accreditation or certification, the commissioner may suspend or revoke the
29 reinsurer's accreditation or certification.

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

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

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

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

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

21 ~~K. L.~~(1) A ceding insurer shall take steps to manage its reinsurance
 22 recoverables proportionate to its own book of business. A domestic ceding insurer
 23 shall notify the commissioner within thirty days after reinsurance recoverables from
 24 any single assuming insurer, or group of affiliated insurers, exceeds fifty percent of
 25 the domestic ceding insurer's last reported surplus to policyholders, or after it is
 26 determined that reinsurance recoverables from any single assuming insurer, or group
 27 of affiliated assuming insurers, is likely to exceed this limit. The notification shall
 28 demonstrate that the exposure is safely managed by the domestic ceding insurer.

29 (2) A ceding insurer shall take steps to diversify its reinsurance program. A
 30 domestic ceding insurer shall notify the commissioner within thirty days after ceding

1 to any single assuming insurer, or group of affiliated assuming insurers, more than
 2 twenty percent of the ceding insurer's gross written premium in the prior calendar
 3 year, or after it has determined that the reinsurance ceded to any single assuming
 4 insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The
 5 notification shall demonstrate that the exposure is safely managed by the domestic
 6 ceding insurer.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____