

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0185.01 Thomas Morris x4218

HOUSE BILL 21-1063

HOUSE SPONSORSHIP

Lontine,

SENATE SPONSORSHIP

Rodriguez,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ADDITIONAL MEANS BY WHICH CREDIT FOR
102 REINSURANCE MAY BE ALLOWED TO A DOMESTIC CEDING
103 INSURER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Federal law preempts the extraterritorial application of state credit for reinsurance law but permits a state to enact reinsurance collateral reforms on an individual basis if the state is accredited. The bill enacts a model law adopted by the National Association of Insurance Commissioners (NAIC), which is necessary to maintain the continued

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

accreditation of the Colorado division of insurance with the NAIC and makes Colorado's reinsurance statutes substantially similar to those found in other states. The model law specifies the grounds upon which a domestic insurer can get credit in Colorado for reinsurance provided by an assuming insurer that is domiciled in an extraterritorial jurisdiction and thereby avoids federal preemption that would otherwise occur by 2022.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-702, **amend** (1)
3 and (7); and **add** (6.5) as follows:

4 **10-3-702. Credit allowed to a domestic ceding insurer - rules**
5 **- definitions.** (1) Credit for reinsurance shall be allowed to a domestic
6 ceding insurer as either an asset or a reduction from liability on account
7 of reinsurance ceded only when the reinsurer meets the requirements of
8 subsection (2), (3), (4), (5), (6), **(6.5)**, or (7) of this section. Credit shall
9 be allowed under subsection (2), (3), or (4) of this section only as respects
10 cessions of those kinds or classes of business that the assuming insurer is
11 licensed or otherwise permitted to write or assume in its state of domicile
12 or, in the case of a United States branch of an alien assuming insurer, in
13 the state through which it is entered and licensed to transact insurance or
14 reinsurance. Credit shall be allowed under subsection (4) or (5) of this
15 section only if the applicable requirements of subsection (8) of this
16 section have been satisfied.

17 (6.5) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS
18 CEDED TO AN ASSUMING INSURER MEETING EACH OF THE FOLLOWING
19 CONDITIONS:

20 (I) THE ASSUMING INSURER MUST HAVE ITS HEAD OFFICE OR BE
21 DOMICILED IN, AS APPLICABLE, AND BE LICENSED IN A RECIPROCAL
22 JURISDICTION.

1 (II) THE ASSUMING INSURER MUST HAVE AND MAINTAIN, ON AN
2 ONGOING BASIS, MINIMUM CAPITAL AND SURPLUS, OR ITS EQUIVALENT,
3 CALCULATED ACCORDING TO THE METHODOLOGY OF ITS DOMICILIARY
4 JURISDICTION, IN AN AMOUNT SET FORTH IN COMMISSIONER RULE. IF THE
5 ASSUMING INSURER IS AN ASSOCIATION, INCLUDING INCORPORATED AND
6 INDIVIDUAL UNINCORPORATED UNDERWRITERS, IT MUST HAVE AND
7 MAINTAIN, ON AN ONGOING BASIS, MINIMUM CAPITAL AND SURPLUS
8 EQUIVALENTS, NET OF LIABILITIES, CALCULATED ACCORDING TO THE
9 METHODOLOGY APPLICABLE IN ITS DOMICILIARY JURISDICTION AND A
10 CENTRAL FUND CONTAINING A BALANCE IN AMOUNTS SET FORTH IN
11 COMMISSIONER RULE.

12 (III) THE ASSUMING INSURER MUST HAVE AND MAINTAIN, ON AN
13 ONGOING BASIS, A MINIMUM SOLVENCY OR CAPITAL RATIO, AS
14 APPLICABLE, THAT IS SET FORTH IN COMMISSIONER RULE. IF THE ASSUMING
15 INSURER IS AN ASSOCIATION, INCLUDING INCORPORATED AND INDIVIDUAL
16 UNINCORPORATED UNDERWRITERS, IT MUST HAVE AND MAINTAIN, ON AN
17 ONGOING BASIS, A MINIMUM SOLVENCY OR CAPITAL RATIO IN THE
18 RECIPROCAL JURISDICTION WHERE THE ASSUMING INSURER HAS ITS HEAD
19 OFFICE OR IS DOMICILED, AS APPLICABLE, AND MUST ALSO BE LICENSED.

20 (IV) THE ASSUMING INSURER MUST AGREE AND PROVIDE
21 ADEQUATE ASSURANCE TO THE COMMISSIONER, IN A FORM SPECIFIED BY
22 THE COMMISSIONER IN RULE, AS FOLLOWS:

23 (A) THE ASSUMING INSURER MUST PROVIDE PROMPT WRITTEN
24 NOTICE AND EXPLANATION TO THE COMMISSIONER IF IT FALLS BELOW THE
25 MINIMUM REQUIREMENTS SET FORTH IN SUBSECTION (6.5)(a)(II) OR
26 (6.5)(a)(III) OF THIS SECTION OR IF ANY REGULATORY ACTION IS TAKEN
27 AGAINST IT FOR SERIOUS NONCOMPLIANCE WITH APPLICABLE LAW;

1 (B) THE ASSUMING INSURER MUST CONSENT IN WRITING TO THE
2 JURISDICTION OF THE COURTS OF THIS STATE AND TO THE APPOINTMENT OF
3 THE COMMISSIONER AS AGENT FOR SERVICE OF PROCESS. THE
4 COMMISSIONER MAY REQUIRE THAT CONSENT FOR SERVICE OF PROCESS BE
5 PROVIDED TO THE COMMISSIONER AND INCLUDED IN EACH REINSURANCE
6 AGREEMENT. NOTHING IN THIS SUBSECTION (6.5)(a)(IV)(B) LIMITS OR IN
7 ANY WAY ALTERS THE CAPACITY OF PARTIES TO A REINSURANCE
8 AGREEMENT TO AGREE TO ALTERNATIVE DISPUTE RESOLUTION
9 MECHANISMS, EXCEPT TO THE EXTENT THAT THE AGREEMENTS ARE
10 UNENFORCEABLE UNDER APPLICABLE INSOLVENCY OR DELINQUENCY LAW.

11 (C) THE ASSUMING INSURER MUST CONSENT IN WRITING TO PAY
12 ALL FINAL JUDGMENTS, WHEREVER ENFORCEMENT IS SOUGHT, THAT HAVE
13 BEEN OBTAINED BY A CEDING INSURER OR ITS LEGAL SUCCESSOR AND
14 THAT HAVE BEEN DECLARED ENFORCEABLE IN THE JURISDICTION WHERE
15 THE JUDGMENT WAS OBTAINED; AND

16 (D) EACH REINSURANCE AGREEMENT MUST INCLUDE A PROVISION
17 REQUIRING THE ASSUMING INSURER TO PROVIDE SECURITY IN AN AMOUNT
18 EQUAL TO ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S
19 LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED PURSUANT TO THAT
20 AGREEMENT IF THE ASSUMING INSURER RESISTS ENFORCEMENT OF EITHER
21 A FINAL JUDGMENT THAT IS ENFORCEABLE UNDER THE LAW OF THE
22 JURISDICTION IN WHICH IT WAS OBTAINED OR OF 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 (V) THE ASSUMING INSURER MUST CONFIRM THAT IT IS NOT
27 PRESENTLY PARTICIPATING IN ANY SOLVENT SCHEME OF ARRANGEMENT

1 THAT INVOLVES THIS STATE'S CEDING INSURERS OR, IF THE ASSUMING
2 INSURER ENTERS INTO SUCH A SOLVENT SCHEME OF ARRANGEMENT, AGREE
3 TO NOTIFY THE CEDING INSURER AND THE COMMISSIONER OF THE
4 ARRANGEMENT AND AGREE TO PROVIDE SECURITY IN AN AMOUNT EQUAL
5 TO ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S LIABILITIES TO
6 THE CEDING INSURER. THE SECURITY MUST BE IN A FORM CONSISTENT
7 WITH SUBSECTION (6) OF THIS SECTION AND SECTION 10-3-703 AND AS
8 SPECIFIED BY THE COMMISSIONER IN RULE.

9 (VI) THE ASSUMING INSURER OR ITS LEGAL SUCCESSOR MUST
10 PROVIDE, IF REQUESTED BY THE COMMISSIONER, ON BEHALF OF ITSELF AND
11 ANY LEGAL PREDECESSORS, CERTAIN DOCUMENTATION TO THE
12 COMMISSIONER, AS SPECIFIED BY THE COMMISSIONER IN RULE.

13 (VII) THE ASSUMING INSURER MUST MAINTAIN A PRACTICE OF
14 PROMPT PAYMENT OF CLAIMS UNDER REINSURANCE AGREEMENTS,
15 PURSUANT TO CRITERIA SET FORTH IN COMMISSIONER RULE.

16 (VIII) THE ASSUMING INSURER'S SUPERVISORY AUTHORITY MUST
17 CONFIRM TO THE COMMISSIONER ON AN ANNUAL BASIS THAT, AS OF THE
18 PRECEDING DECEMBER 31 OR AT THE ANNUAL DATE OTHERWISE
19 STATUTORILY REPORTED TO THE RECIPROCAL JURISDICTION, THE
20 ASSUMING INSURER COMPLIES WITH THE REQUIREMENTS SET FORTH IN
21 SUBSECTIONS (6.5)(a)(II) AND (6.5)(a)(III) OF THIS SECTION.

22 (b) (I) THE COMMISSIONER SHALL TIMELY CREATE AND PUBLISH A
23 LIST OF RECIPROCAL JURISDICTIONS.

24 (II) A LIST OF RECIPROCAL JURISDICTIONS IS PUBLISHED THROUGH
25 THE NAIC COMMITTEE PROCESS. THE COMMISSIONER'S LIST MUST
26 INCLUDE ANY RECIPROCAL JURISDICTION AS DESCRIBED IN SUBSECTION
27 (6.5)(h)(III)(A) OR (6.5)(h)(III)(B) OF THIS SECTION AND MUST CONSIDER

1 ANY OTHER RECIPROCAL JURISDICTION INCLUDED ON THE NAIC LIST OF
2 RECIPROCAL JURISDICTIONS. THE COMMISSIONER MAY APPROVE A
3 JURISDICTION THAT DOES NOT APPEAR ON THE NAIC LIST IN ACCORDANCE
4 WITH CRITERIA TO BE DEVELOPED UNDER RULES ISSUED BY THE
5 COMMISSIONER.

6 (III) THE COMMISSIONER MAY REMOVE A JURISDICTION FROM THE
7 LIST OF RECIPROCAL JURISDICTIONS UPON A DETERMINATION THAT THE
8 JURISDICTION NO LONGER MEETS THE REQUIREMENTS OF A RECIPROCAL
9 JURISDICTION IN ACCORDANCE WITH A PROCESS SET FORTH IN RULES
10 ISSUED BY THE COMMISSIONER; EXCEPT THAT THE COMMISSIONER SHALL
11 NOT REMOVE FROM THE LIST A RECIPROCAL JURISDICTION AS DESCRIBED
12 IN SUBSECTION (6.5)(h)(III)(A) OR (6.5)(h)(III)(B) OF THIS SECTION. UPON
13 REMOVAL OF A RECIPROCAL JURISDICTION FROM THE LIST, CREDIT FOR
14 REINSURANCE CEDED TO AN ASSUMING INSURER THAT HAS ITS HOME
15 OFFICE OR IS DOMICILED IN THAT JURISDICTION SHALL BE ALLOWED, IF
16 OTHERWISE ALLOWED PURSUANT TO THIS PART 7.

17 (c) THE COMMISSIONER SHALL TIMELY CREATE AND PUBLISH A LIST
18 OF ASSUMING INSURERS THAT HAVE SATISFIED THE CONDITIONS SET FORTH
19 IN THIS SUBSECTION (6.5) AND TO WHICH CESSIONS SHALL BE GRANTED
20 CREDIT IN ACCORDANCE WITH THIS SUBSECTION (6.5). THE COMMISSIONER
21 MAY ADD AN ASSUMING INSURER TO THE LIST IF AN NAIC-ACCREDITED
22 JURISDICTION HAS ADDED THE ASSUMING INSURER TO A LIST OF ASSUMING
23 INSURERS OR IF, UPON INITIAL ELIGIBILITY, THE ASSUMING INSURER
24 SUBMITS THE INFORMATION TO THE COMMISSIONER AS REQUIRED UNDER
25 SUBSECTION (6.5)(a)(IV) OF THIS SECTION AND COMPLIES WITH ANY
26 ADDITIONAL REQUIREMENT THAT THE COMMISSIONER MAY IMPOSE IN
27 RULE, EXCEPT TO THE EXTENT THAT THE REQUIREMENT CONFLICTS WITH

1 AN APPLICABLE COVERED AGREEMENT.

2 (d) (I) IF THE COMMISSIONER DETERMINES THAT AN ASSUMING
3 INSURER NO LONGER MEETS ONE OR MORE OF THE REQUIREMENTS UNDER
4 THIS SUBSECTION (6.5), THE COMMISSIONER MAY REVOKE OR SUSPEND THE
5 ELIGIBILITY OF THE ASSUMING INSURER FOR RECOGNITION UNDER THIS
6 SUBSECTION (6.5) IN ACCORDANCE WITH PROCEDURES SET FORTH IN RULE.

7 (II) WHILE AN ASSUMING INSURER'S ELIGIBILITY IS SUSPENDED, NO
8 REINSURANCE AGREEMENT ISSUED, AMENDED, OR RENEWED AFTER THE
9 EFFECTIVE DATE OF THE SUSPENSION QUALIFIES FOR CREDIT, EXCEPT TO
10 THE EXTENT THAT THE ASSUMING INSURER'S OBLIGATIONS UNDER THE
11 CONTRACT ARE SECURED IN ACCORDANCE WITH SECTION 10-3-703.

12 (III) IF AN ASSUMING INSURER'S ELIGIBILITY IS REVOKED, NO
13 CREDIT FOR REINSURANCE MAY BE GRANTED AFTER THE EFFECTIVE DATE
14 OF THE REVOCATION WITH RESPECT TO ANY REINSURANCE AGREEMENTS
15 ENTERED INTO BY THE ASSUMING INSURER, INCLUDING REINSURANCE
16 AGREEMENTS ENTERED INTO PRIOR TO THE DATE OF REVOCATION, EXCEPT
17 TO THE EXTENT THAT THE ASSUMING INSURER'S OBLIGATIONS UNDER THE
18 CONTRACT ARE SECURED IN A FORM ACCEPTABLE TO THE COMMISSIONER
19 AND CONSISTENT WITH SECTION 10-3-703.

20 (e) IF SUBJECT TO A LEGAL PROCESS OF REHABILITATION,
21 LIQUIDATION, OR CONSERVATION, AS APPLICABLE, THE CEDING INSURER OR
22 ITS REPRESENTATIVE MAY SEEK AND, IF DETERMINED APPROPRIATE BY THE
23 COURT IN WHICH THE PROCEEDINGS ARE PENDING, MAY OBTAIN AN ORDER
24 REQUIRING THAT THE ASSUMING INSURER POST SECURITY FOR ALL
25 OUTSTANDING CEDED LIABILITIES.

26 (f) NOTHING IN THIS SUBSECTION (6.5):

27 (I) PRECLUDES AN ASSUMING INSURER FROM PROVIDING THE

1 COMMISSIONER WITH INFORMATION ON A VOLUNTARY BASIS; OR

2 (II) LIMITS OR IN ANY WAY ALTERS THE CAPACITY OF PARTIES TO
3 A REINSURANCE AGREEMENT TO AGREE ON REQUIREMENTS FOR SECURITY
4 OR OTHER TERMS IN THAT REINSURANCE AGREEMENT, EXCEPT AS
5 EXPRESSLY PROHIBITED BY THIS PART 7 OR OTHER APPLICABLE LAW OR
6 RULE.

7 (g) (I) CREDIT MAY BE TAKEN UNDER THIS SUBSECTION (6.5) ONLY
8 FOR REINSURANCE AGREEMENTS ENTERED INTO, AMENDED, OR RENEWED
9 ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6.5) AND ONLY
10 WITH RESPECT TO LOSSES INCURRED AND RESERVES REPORTED ON OR
11 AFTER THE LATER OF:

12 (A) THE DATE ON WHICH THE ASSUMING INSURER HAS MET ALL
13 ELIGIBILITY REQUIREMENTS PURSUANT TO SUBSECTIONS (6.5)(a) AND
14 (6.5)(b) OF THIS SECTION; AND

15 (B) THE EFFECTIVE DATE OF THE NEW REINSURANCE AGREEMENT,
16 AMENDMENT, OR RENEWAL.

17 (II) THIS SUBSECTION (6.5)(g) DOES NOT ALTER OR IMPAIR A
18 CEDING INSURER'S RIGHT TO TAKE CREDIT FOR REINSURANCE, TO THE
19 EXTENT THAT CREDIT IS NOT AVAILABLE UNDER THIS SUBSECTION (6.5), AS
20 LONG AS THE REINSURANCE QUALIFIES FOR CREDIT UNDER ANY OTHER
21 APPLICABLE PROVISION OF THIS PART 7.

22 (III) NOTHING IN THIS SUBSECTION (6.5)(g):

23 (A) AUTHORIZES AN ASSUMING INSURER TO WITHDRAW OR
24 REDUCE THE SECURITY PROVIDED UNDER ANY REINSURANCE AGREEMENT,
25 EXCEPT AS PERMITTED BY THE TERMS OF THE AGREEMENT; OR

26 (B) LIMITS OR IN ANY WAY ALTERS THE CAPACITY OF PARTIES TO
27 ANY REINSURANCE AGREEMENT TO RENEGOTIATE THE AGREEMENT.

1 (h) AS USED IN THIS SUBSECTION (6.5):

2 (I) "COVERED AGREEMENT" MEANS AN AGREEMENT ENTERED INTO
3 PURSUANT TO THE FEDERAL "DODD-FRANK WALL STREET REFORM AND
4 CONSUMER PROTECTION ACT", AS AMENDED, 31 U.S.C. SECS. 313 AND
5 314, THAT IS CURRENTLY IN EFFECT OR IN A PERIOD OF PROVISIONAL
6 APPLICATION AND ADDRESSES THE ELIMINATION, UNDER SPECIFIED
7 CONDITIONS, OF COLLATERAL REQUIREMENTS AS A CONDITION FOR
8 ENTERING INTO ANY REINSURANCE AGREEMENT WITH A CEDING INSURER
9 DOMICILED IN THIS STATE OR FOR ALLOWING THE CEDING INSURER TO
10 RECOGNIZE CREDIT FOR REINSURANCE.

11 (II) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE
12 COMMISSIONERS OR ANY ANALOGOUS SUCCESSOR ORGANIZATION.

13 (III) "RECIPROCAL JURISDICTION" MEANS A JURISDICTION THAT
14 MEETS ONE OF THE FOLLOWING CONDITIONS:

15 (A) A NON-UNITED STATES JURISDICTION THAT IS SUBJECT TO AN
16 IN-FORCE COVERED AGREEMENT WITH THE UNITED STATES, EACH WITHIN
17 ITS LEGAL AUTHORITY, OR, IN THE CASE OF A COVERED AGREEMENT
18 BETWEEN THE UNITED STATES AND THE EUROPEAN UNION, IS A MEMBER
19 STATE OF THE EUROPEAN UNION;

20 (B) A UNITED STATES JURISDICTION THAT MEETS THE
21 REQUIREMENTS FOR ACCREDITATION UNDER THE NAIC FINANCIAL
22 STANDARDS AND ACCREDITATION PROGRAM; OR

23 (C) A QUALIFIED JURISDICTION, AS DETERMINED BY THE
24 COMMISSIONER PURSUANT TO SUBSECTION (6)(d) OF THIS SECTION, THAT
25 IS NOT OTHERWISE DESCRIBED IN SUBSECTION (6.5)(h)(III)(A) OR
26 (6.5)(h)(III)(B) OF THIS SECTION AND THAT MEETS CERTAIN ADDITIONAL
27 REQUIREMENTS, CONSISTENT WITH THE TERMS AND CONDITIONS OF

1 IN-FORCE COVERED AGREEMENTS, AS SPECIFIED BY THE COMMISSIONER IN
2 RULE.

3 (7) Credit shall be allowed when the reinsurance is ceded to an
4 assuming insurer not meeting the requirements of subsection (2), (3), (4),
5 (5), ~~or~~ (6), OR (6.5) of this section, but only as to the insurance of risks
6 located in jurisdictions where the reinsurance is required by applicable
7 law or regulation of that jurisdiction.

8 **SECTION 2. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly; except that, if a referendum petition is filed pursuant
12 to section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part will not take effect unless approved by the people at the
15 general election to be held in November 2022 and, in such case, will take
16 effect on the date of the official declaration of the vote thereon by the
17 governor.

18 (2) This act applies to conduct occurring on or after the applicable
19 effective date of this act.