

CHAPTER 40

INSURANCE

HOUSE BILL 21-1063

BY REPRESENTATIVE(S) Lontine, Duran, Kennedy, McCluskie, Woodrow, Garnett;
also SENATOR(S) Rodriguez.

AN ACT**CONCERNING ADDITIONAL MEANS BY WHICH CREDIT FOR REINSURANCE MAY BE ALLOWED TO A DOMESTIC CEDING INSURER.**

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

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

10-3-702. Credit allowed to a domestic ceding insurer - rules - definitions.

(1) Credit for reinsurance shall be allowed to a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), (6), **(6.5)**, or (7) of this section. Credit shall be allowed under subsection (2), (3), or (4) of this section only as respects cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, 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. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (8) of this section have been satisfied.

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

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

(II) THE ASSUMING INSURER MUST HAVE AND MAINTAIN, ON AN ONGOING BASIS, MINIMUM CAPITAL AND SURPLUS, OR ITS EQUIVALENT, CALCULATED ACCORDING TO THE METHODOLOGY OF ITS DOMICILIARY JURISDICTION, IN AN AMOUNT SET FORTH

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IN COMMISSIONER RULE. IF THE ASSUMING INSURER IS AN ASSOCIATION, INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS, IT MUST HAVE AND MAINTAIN, ON AN ONGOING BASIS, 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 SET FORTH IN COMMISSIONER RULE.

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

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

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

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

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

(D) EACH REINSURANCE AGREEMENT MUST INCLUDE A PROVISION REQUIRING THE ASSUMING INSURER TO PROVIDE SECURITY IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED PURSUANT TO THAT AGREEMENT IF THE ASSUMING INSURER RESISTS ENFORCEMENT OF EITHER A FINAL JUDGMENT THAT IS ENFORCEABLE UNDER THE LAW OF THE JURISDICTION IN WHICH IT WAS OBTAINED OR OF A PROPERLY ENFORCEABLE ARBITRATION AWARD, WHETHER OBTAINED BY THE CEDING INSURER OR BY ITS LEGAL SUCCESSOR ON BEHALF OF ITS RESOLUTION ESTATE.

(V) THE ASSUMING INSURER MUST CONFIRM THAT IT IS NOT PRESENTLY PARTICIPATING IN ANY SOLVENT SCHEME OF ARRANGEMENT THAT INVOLVES THIS

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

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

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

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

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

(II) A LIST OF RECIPROCAL JURISDICTIONS IS PUBLISHED THROUGH THE NAIC COMMITTEE PROCESS. THE COMMISSIONER'S LIST MUST INCLUDE ANY RECIPROCAL JURISDICTION AS DESCRIBED IN SUBSECTION (6.5)(h)(III)(A) OR (6.5)(h)(III)(B) OF THIS SECTION AND MUST CONSIDER ANY OTHER RECIPROCAL JURISDICTION INCLUDED ON THE NAIC LIST OF RECIPROCAL JURISDICTIONS. THE COMMISSIONER MAY APPROVE A JURISDICTION THAT DOES NOT APPEAR ON THE NAIC LIST IN ACCORDANCE WITH CRITERIA TO BE DEVELOPED UNDER RULES ISSUED BY THE COMMISSIONER.

(III) THE 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 IN ACCORDANCE WITH A PROCESS SET FORTH IN RULES ISSUED BY THE COMMISSIONER; EXCEPT THAT THE COMMISSIONER SHALL NOT REMOVE FROM THE LIST A RECIPROCAL JURISDICTION AS DESCRIBED IN SUBSECTION (6.5)(h)(III)(A) OR (6.5)(h)(III)(B) OF THIS SECTION. UPON REMOVAL OF A RECIPROCAL JURISDICTION FROM THE LIST, 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 PURSUANT TO THIS PART 7.

(c) THE COMMISSIONER SHALL TIMELY CREATE AND PUBLISH A LIST OF ASSUMING INSURERS THAT HAVE SATISFIED THE CONDITIONS SET FORTH IN THIS SUBSECTION (6.5) AND TO WHICH CESSIONS SHALL BE GRANTED CREDIT IN ACCORDANCE WITH THIS SUBSECTION (6.5). THE COMMISSIONER MAY ADD AN ASSUMING INSURER TO THE LIST IF AN NAIC-ACCREDITED JURISDICTION HAS ADDED THE ASSUMING

INSURER TO A LIST OF ASSUMING INSURERS OR IF, UPON INITIAL ELIGIBILITY, THE ASSUMING INSURER SUBMITS THE INFORMATION TO THE COMMISSIONER AS REQUIRED UNDER SUBSECTION (6.5)(a)(IV) OF THIS SECTION AND COMPLIES WITH ANY ADDITIONAL REQUIREMENT THAT THE COMMISSIONER MAY IMPOSE IN RULE, EXCEPT TO THE EXTENT THAT THE REQUIREMENT CONFLICTS WITH AN APPLICABLE COVERED AGREEMENT.

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

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

(III) IF AN ASSUMING INSURER'S ELIGIBILITY IS REVOKED, NO CREDIT FOR REINSURANCE MAY 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 PRIOR TO 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 COMMISSIONER AND CONSISTENT WITH SECTION 10-3-703.

(e) 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.

(f) NOTHING IN THIS SUBSECTION (6.5):

(I) PRECLUDES AN ASSUMING INSURER FROM PROVIDING THE COMMISSIONER WITH INFORMATION ON A VOLUNTARY BASIS; OR

(II) LIMITS OR IN ANY WAY ALTERS 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 PART 7 OR OTHER APPLICABLE LAW OR RULE.

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

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

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

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

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

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

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

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

(I) "COVERED AGREEMENT" MEANS AN AGREEMENT ENTERED INTO PURSUANT TO THE FEDERAL "DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT", AS AMENDED, 31 U.S.C. SECS. 313 AND 314, THAT IS CURRENTLY IN EFFECT OR IN A PERIOD OF PROVISIONAL APPLICATION AND 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) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ANY ANALOGOUS SUCCESSOR ORGANIZATION.

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

(A) A NON-UNITED STATES JURISDICTION 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 STATE OF THE EUROPEAN UNION;

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

(C) A QUALIFIED JURISDICTION, AS DETERMINED BY THE COMMISSIONER PURSUANT TO SUBSECTION (6)(d) OF THIS SECTION, THAT IS NOT OTHERWISE DESCRIBED IN SUBSECTION (6.5)(h)(III)(A) OR (6.5)(h)(III)(B) OF THIS SECTION AND THAT MEETS CERTAIN ADDITIONAL REQUIREMENTS, CONSISTENT WITH THE TERMS AND CONDITIONS OF IN-FORCE COVERED AGREEMENTS, AS SPECIFIED BY THE COMMISSIONER IN RULE.

(7) Credit shall be allowed when the reinsurance is ceded to an assuming insurer

not meeting the requirements of subsection (2), (3), (4), (5), ~~or~~ (6), OR (6.5) 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.

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

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

Approved: April 19, 2021