

## CHAPTER 158

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**INSURANCE**


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**HOUSE BILL 05-1320**

BY REPRESENTATIVE(S) Jahn;  
also SENATOR(S) Veiga.

**AN ACT****CONCERNING CONDITIONS FOR ALLOWING CREDIT FOR REINSURANCE.**

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

**SECTION 1.** 10-3-118, Colorado Revised Statutes, is amended to read:

**10-3-118. Reinsurance - conditions - credit for reinsurance.** (1) ~~Any insurance company or health maintenance organization or fraternal benefit society or nonprofit hospital, medical-surgical, and health service corporation authorized to do business in this state, referred to in this section as the "ceding insurer", may, subject to the provisions of part 7 of this article, reinsure all or part of an insurance risk in any other insurer or health maintenance organization or fraternal benefit society or nonprofit hospital, medical-surgical, and health service corporation, referred to in this section as the "reinsurer", provided such reinsurer is licensed or authorized to write the type of risk ceded.~~ THE PURPOSE OF THIS SECTION IS TO PROTECT THE INTEREST OF INSURERS, CLAIMANTS, CEDING INSURERS, ASSUMING INSURERS, AND THE PUBLIC. THE GENERAL ASSEMBLY HEREBY DECLARES IT IS OF INTEREST TO THE STATE TO ENSURE ADEQUATE REGULATION OF INSURERS AND REINSURERS AND ADEQUATE PROTECTION FOR THOSE TO WHOM THEY OWE OBLIGATIONS. IN FURTHERANCE OF SUCH STATE INTEREST, THE GENERAL ASSEMBLY HEREBY SUPPORTS A MANDATE THAT UPON THE INSOLVENCY OF AN ALIEN INSURER OR REINSURER THAT PROVIDES SECURITY TO FUND ITS UNITED STATES OBLIGATIONS IN ACCORDANCE WITH THIS SECTION, THE ASSETS REPRESENTING THE SECURITY SHALL BE MAINTAINED IN THE UNITED STATES AND CLAIMS SHALL BE FILED WITH AND VALUED BY THE STATE INSURANCE COMMISSIONER WITH REGULATORY OVERSIGHT, AND THE ASSETS SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE INSURANCE LAWS OF THE STATE IN WHICH THE TRUST IS DOMICILED THAT ARE APPLICABLE TO THE LIQUIDATION OF DOMESTIC INSURANCE COMPANIES. THE GENERAL ASSEMBLY DECLARES THAT THE MATTERS CONTAINED IN THIS SECTION ARE FUNDAMENTAL TO THE BUSINESS OF INSURANCE IN

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

ACCORDANCE WITH 15 U.S.C. SEC. 1011 AND 1012. FOR THE PURPOSES OF THIS SECTION, "INSURER" AND "REINSURER" INCLUDE ANY INSURANCE COMPANY, HEALTH MAINTENANCE ORGANIZATION, FRATERNAL BENEFIT SOCIETY, NONPROFIT HOSPITAL, OR MEDICAL-SURGICAL AND HEALTH SERVICE CORPORATION.

(2) Complete copies of all reinsurance treaties and contracts and other information desired shall be filed with the commissioner ~~pursuant to regulation or at his~~ THE COMMISSIONER'S request.

(3) No credit shall be allowed as an asset or a ~~deduction~~ REDUCTION from liability, to any DOMESTIC ceding insurer for reinsurance:

(a) If any premium tax payable by the ceding insurer on the reinsured policies is not paid as required by section 10-3-209; OR

(b) Unless the ~~reinsurance is payable by the reinsurer while in force on the basis of the contractual liability of the ceding insurer under the contracts reinsured without diminution due to the insolvency of the ceding insurer;~~ CONTRACT CONTAINS AN INSOLVENCY CLAUSE IN ACCORDANCE WITH SECTION 10-3-531.

~~(c) Where the reinsurance contract does not result in the absolute transfer to the reinsurer of risk or liability; or~~

~~(d) On the coinsurance plan in excess of the reserve amount established by the reinsurer.~~

~~(4) Where a reinsurance contract involves the possible repayment of tentative commissions by the ceding insurer, the credit otherwise allowable to the ceding company shall be reduced by the amount of such tentative commissions.~~

~~(5)(a)~~ (4) (a) Credit for reinsurance shall be allowed a DOMESTIC ceding insurer as either an asset or a ~~deduction~~ REDUCTION from liability on account of reinsurance ceded only when the reinsurer meets the requirements of ~~any one of paragraphs PARAGRAPH (b), to (d) (c), (e), (f), or (g) of this subsection (5) (4). However, if the requirements of paragraph (d) of this subsection (5) are met, the requirements of paragraph (f) of this subsection (5) shall also be met.~~ CREDIT SHALL BE ALLOWED UNDER PARAGRAPH (b), (c), OR (e) OF THIS SUBSECTION (4) ONLY WITH RESPECT TO CESSIONS OF THE KIND OR CLASS OF BUSINESS IN WHICH 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 PARAGRAPH (e) OR (f) OF THIS SUBSECTION (4) ONLY IF THE APPLICABLE REQUIREMENTS OF PARAGRAPHS (h) AND (i) OF THIS SUBSECTION (4) HAVE BEEN SATISFIED.

(b) Credit shall be allowed when the reinsurance is ceded to a reinsurer ~~which~~ THAT is licensed to transact insurance or reinsurance in this state.

(c) Credit shall be allowed when the reinsurance is ceded to a reinsurer ~~which~~ THAT is accredited as a reinsurer in this state. To be accredited, a reinsurer ~~must~~ SHALL:

(I) File with the commissioner evidence of its submission to this state's jurisdiction;

(II) Submit to this state's authority to examine its books and records;

(III) Be licensed to transact insurance or reinsurance or be licensed as a health maintenance organization in at least one state, or, in the case of a United States branch of an alien reinsurer, ~~is~~ SHALL BE entered through and licensed to transact insurance or reinsurance in at least one state;

(IV) File annually with the commissioner a copy of its annual statement filed with the regulatory authority of its state of domicile and a copy of its most recent audited financial statement and ~~either~~ maintain a surplus as regards policyholders or net worth in an amount ~~which is~~ not less than twenty million dollars and ~~file~~ WHOSE ACCREDITATION has not been denied by the commissioner WITHIN NINETY DAYS AFTER ITS SUBMISSION or maintain a surplus as regards policyholders or net worth in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

(d) CREDIT SHALL NOT BE ALLOWED A DOMESTIC CEDING INSURER IF THE REINSURER'S ACCREDITATION HAS BEEN REVOKED BY THE COMMISSIONER AFTER NOTICE AND HEARING.

(e) (I) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED TO A REINSURER THAT IS DOMICILED IN, OR IN THE CASE OF A UNITED STATES BRANCH OF AN ALIEN REINSURER IS ENTERED THROUGH, A STATE THAT EMPLOYS STANDARDS REGARDING CREDIT FOR REINSURANCE SUBSTANTIALLY SIMILAR TO THOSE APPLICABLE UNDER THIS SECTION, AND THE ASSUMING INSURER OR A UNITED STATES BRANCH OF AN ALIEN REINSURER:

(A) MAINTAINS A SURPLUS WITH REGARD TO POLICYHOLDERS IN AN AMOUNT NOT LESS THAN TWENTY MILLION DOLLARS; AND

(B) SUBMITS TO A REQUEST OF THE COMMISSIONER TO EXAMINE ITS BOOKS AND RECORDS.

(II) THE REQUIREMENT OF SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) SHALL NOT APPLY TO REINSURANCE CEDED AND ASSUMED PURSUANT TO POOLING ARRANGEMENTS AMONG INSURERS IN THE SAME HOLDING COMPANY SYSTEM.

~~(d) (f)~~ (f) (I) Credit shall be allowed when the reinsurance is ceded to a reinsurer that maintains a trust fund in a qualified United States financial institution, as defined in section 10-1-102 (17), for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers and their assigns and successors in interest. To ENABLE THE COMMISSIONER TO DETERMINE THE SUFFICIENCY OF THE TRUST FUND, the reinsurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers. ~~to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single reinsurer, the trust shall consist of a trustee account representing the reinsurer's liabilities attributable to business written in the United States and, in addition, the reinsurer shall maintain a~~

~~trusteed surplus of not less than twenty million dollars. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group; 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 solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. THE REINSURER SHALL SUBMIT TO EXAMINATION OF ITS BOOKS AND RECORDS BY THE COMMISSIONER AND SHALL BEAR THE EXPENSE OF THE EXAMINATION.~~

~~(H) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph (I) of this paragraph (d), and which is under the supervision of the department of trade and industry of the United Kingdom and submits to this state's authority to examine its books and records and bears the expense of the examination and which has aggregate policyholders surplus of ten billion dollars, the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.~~

~~(HH) (II) (A) The CREDIT FOR REINSURANCE SHALL NOT BE GRANTED UNDER THIS PARAGRAPH (f) UNLESS THE FORM OF THE trust shall be established in a form AND ANY AMENDMENTS TO THE TRUST HAVE BEEN approved by the commissioner OF THE STATE WHERE THE TRUST IS DOMICILED OR THE COMMISSIONER OF ANOTHER STATE WHO, PURSUANT TO THE TERMS OF THE TRUST INSTRUMENT, HAS ACCEPTED PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST.~~

~~(B) THE FORM OF THE TRUST AND ANY TRUST AMENDMENTS SHALL ALSO BE FILED WITH THE COMMISSIONER OF EVERY STATE IN WHICH THE CEDING INSURER BENEFICIARIES OF THE TRUST ARE DOMICILED. 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. The trust shall vest legal title to its assets in the ITS trustees of the trust for IT'S THE BENEFIT OF THE REINSURER'S United States policyholders and ceding insurers AND their assigns and successors in interest. The trust and the reinsurer shall be subject to examination as determined by the commissioner.~~

~~(C) Such trust shall remain in effect for as long as the reinsurer shall have HAS outstanding obligations due under the reinsurance agreements subject to the trust. NO LATER THAN FEBRUARY 28 OF EACH YEAR, THE TRUSTEES OF THE TRUST SHALL REPORT TO THE COMMISSIONER IN WRITING THE BALANCE OF THE TRUST, SHALL LIST THE TRUST'S INVESTMENTS AT THE PRECEDING YEAR-END, AND SHALL CERTIFY THE DATE OF TERMINATION OF THE TRUST, IF SO PLANNED, OR CERTIFY THAT THE TRUST~~

WILL NOT EXPIRE PRIOR TO THE NEXT FOLLOWING DECEMBER 31.

~~(IV) (III) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.~~ THE TRUST FUND FOR A SINGLE ASSUMING INSURER SHALL CONSIST OF FUNDS OF AN AMOUNT NOT LESS THAN THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS AND, IN ADDITION, THE ASSUMING INSURER SHALL MAINTAIN A TRUSTEED SURPLUS OF NOT LESS THAN TWENTY MILLION DOLLARS.

(IV) IN THE CASE OF A GROUP INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS, FOR REINSURANCE CEDED UNDER REINSURANCE AGREEMENTS WITH AN INCEPTION, AMENDMENT, OR RENEWAL DATE ON OR AFTER AUGUST 1, 1995, THE TRUST SHALL CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE GROUP'S SEVERAL LIABILITIES ATTRIBUTABLE TO BUSINESS CEDED BY UNITED STATES DOMICILED CEDING INSURERS TO ANY MEMBER OF THE GROUP, AND FOR REINSURANCE CEDED UNDER REINSURANCE AGREEMENTS WITH AN INCEPTION DATE ON OR BEFORE JULY 31, 1995, AND NOT AMENDED OR RENEWED AFTER SUCH DATE, NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, THE TRUST SHALL CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE GROUP'S SEVERAL INSURANCE AND REINSURANCE LIABILITIES ATTRIBUTABLE TO BUSINESS WRITTEN IN THE UNITED STATES. IN ADDITION, THE GROUP SHALL MAINTAIN IN TRUST A TRUSTEED SURPLUS OF WHICH ONE HUNDRED MILLION DOLLARS 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. 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. WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, THE GROUP SHALL PROVIDE TO THE COMMISSIONER AN ANNUAL CERTIFICATION BY THE GROUP'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 GROUP.

~~(e) The commissioner shall annually prepare a list of those reinsurers which meet the conditions imposed by paragraph (c) or (d) of this subsection (5).~~

(g) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF PARAGRAPH (b), (c), (e), OR (f) OF THIS SUBSECTION (4), BUT ONLY AS TO THE INSURANCE OF RISKS LOCATED IN JURISDICTIONS WHERE THE REINSURANCE IS REQUIRED BY APPLICABLE LAW OR RULE OF THAT JURISDICTION.

~~(f) (f) (h) (I)~~ If the reinsurer is not licensed or accredited to transact insurance or reinsurance in this state, or is not licensed as a health maintenance organization in this state, the credit permitted by ~~paragraph~~ PARAGRAPHS (e) AND (f) of this subsection ~~(5)~~ (4) shall not be allowed unless the assuming insurer agrees in the

## reinsurance agreements:

(A) That in the event of the failure of the reinsurer to perform its obligations under the terms of the reinsurance agreement, the reinsurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(B) To designate the 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 company.

(II) This ~~provision~~ PARAGRAPH (h) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(i) IF THE ASSUMING INSURER DOES NOT MEET THE REQUIREMENTS OF PARAGRAPH (b), (c), OR (e) OF THIS SUBSECTION (4), THE CREDIT PERMITTED BY PARAGRAPH (f) OF THIS SUBSECTION (4) SHALL NOT BE ALLOWED UNLESS THE ASSUMING INSURER AGREES IN THE TRUST AGREEMENTS TO THE FOLLOWING CONDITIONS:

(I) 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 SUBPARAGRAPH (III) OR (IV) OF PARAGRAPH (f) OF THIS SUBSECTION (4), 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, THE TRUSTEE SHALL COMPLY WITH AN ORDER OF THE COMMISSIONER WITH REGULATORY OVERSIGHT OVER THE TRUST OR WITH AN ORDER OF A COURT OF COMPETENT JURISDICTION DIRECTING THE TRUSTEE TO TRANSFER TO THE COMMISSIONER WITH REGULATORY OVERSIGHT ALL OF THE ASSETS OF THE TRUST FUND.

(II) THE ASSETS SHALL BE DISTRIBUTED BY AND CLAIMS SHALL BE FILED WITH AND VALUED BY THE COMMISSIONER WITH REGULATORY OVERSIGHT IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE TRUST IS DOMICILED THAT ARE APPLICABLE TO THE LIQUIDATION OF DOMESTIC INSURANCE COMPANIES.

(III) IF THE COMMISSIONER WITH REGULATORY OVERSIGHT DETERMINES THAT THE ASSETS OF THE TRUST FUND OR ANY PART THEREOF ARE NOT NECESSARY TO SATISFY THE CLAIMS OF THE UNITED STATES CEDING INSURERS OF THE GRANTOR OF THE TRUST, THE ASSETS OR PART THEREOF SHALL BE RETURNED BY THE COMMISSIONER WITH REGULATORY OVERSIGHT TO THE TRUSTEE FOR DISTRIBUTION IN ACCORDANCE WITH THE TRUST AGREEMENT.

(IV) THE GRANTOR SHALL WAIVE ANY RIGHT OTHERWISE AVAILABLE TO IT UNDER UNITED STATES LAW THAT IS INCONSISTENT WITH THIS PARAGRAPH (i).

~~(6)~~ (5) AN ASSET OR a reduction from liability for the reinsurance ceded by ~~an~~ A DOMESTIC insurer to a reinsurer not meeting the requirements of subsection ~~(5)~~ (4) of this section shall be allowed in an amount not exceeding the liabilities carried by

the ceding insurer. ~~and such~~ THE ASSET OR reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such reinsurer as security for the payment of such obligations, if such security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution as defined in section 10-1-102 (17). This security may be in the form of:

(a) Cash;

(b) Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets;

(c) CLEAN, IRREVOCABLE, UNCONDITIONAL letters of credit issued or confirmed in accordance with section 10-1-102 (17) (b) by a qualified United States financial institution, as defined by section 10-1-102 (17), EFFECTIVE no later than December 31 ~~in respect~~ of the year for which filing is being made, and in the possession of, OR IN TRUST FOR, the ceding ~~company~~ INSURER on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

(d) Any other form of security acceptable to the commissioner.

~~(7)~~ (6) The commissioner may adopt rules ~~and regulations~~ implementing the provisions of this section.

~~(8)~~ (7) The liquidator, conservator, receiver, or statutory successor of the ceding insurer shall give written notice to the reinsurer of the pendency of a claim against the reinsurer. Such notice shall indicate the policy or bond reinsured and whether the claim could involve a possible liability on the part of the reinsurer. Such notice shall be given within a reasonable time after such claim is filed in the conservation, liquidation, or insolvency proceeding. During the pendency of such claim, the reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense deemed available to the ceding insurer or its liquidator, conservator, receiver, or statutory successor. The expense thus incurred by the reinsurer shall be chargeable, subject to the approval of the court, against the ceding insurer as part of the expense of conservation, liquidation, or insolvency proceeding to the extent of a pro rata share of the benefit ~~which~~ THAT may accrue to the ceding insurer solely as a result of the defense undertaken by the reinsurer.

**SECTION 2. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act

or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 25, 2005