

South Carolina Legislature

4656 found 2 times. 

H*4656

Session 122 (2017-2018)

H*4656 (Rat #0185, Act #0172 of 2018) General Bill, By Sandifer and Spires

Similar (S 786)

AN ACT TO AMEND SECTION 38-9-200, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REINSURANCE CREDITS, SO AS TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO ADOPT ADDITIONAL REQUIREMENTS FOR REINSURANCE CREDITS, TO REQUIRE A REINSURER TO DEMONSTRATE IT HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS TO QUALIFY FOR A CREDIT, TO ALLOW FOR THE REDUCTION OF A TRUSTED SURPLUS FOR AN ASSUMING INSURER WHO HAS PERMANENTLY DISCONTINUED UNDERWRITING NEW BUSINESS, TO ALLOW FOR CREDIT WHEN REINSURANCE IS CEDED AND ENUMERATE CERTAIN ELIGIBILITY REQUIREMENTS, TO ALLOW FOR AN ASSUMING INSURER WHO IS NOT LICENSED, CERTIFIED, OR ACCREDITED IN THIS STATE TO BECOME ELIGIBLE FOR A CREDIT UNDER CERTAIN CIRCUMSTANCES, TO ALLOW THE DIRECTOR TO SUSPEND OR REVOKE THE ACCREDITATION OR CERTIFICATION, TO REQUIRE AN INSURER TO MANAGE ITS REINSURANCE RECOVERABLES PROPORTIONATE TO ITS BOOK OF BUSINESS, AND TO AUTHORIZE THE DIRECTOR TO ADOPT RULES AND REGULATIONS; AND TO AMEND SECTION 38-9-210, RELATING TO LIABILITY REDUCTIONS FOR REINSURANCE, SO AS TO AUTHORIZE THE DIRECTOR TO ADOPT ADDITIONAL REQUIREMENTS FOR AN ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED BY A DOMESTIC INSURER AND TO EXPAND THE ACCEPTABLE FORM OF SECURITY FOR A LIABILITY REDUCTION. - ratified title

01/23/18	House	Introduced and read first time (House Journal-page 30)
01/23/18	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 30)
02/01/18	House	Committee report: Favorable Labor, Commerce and Industry (House Journal-page 16)
02/07/18	House	Read second time (House Journal-page 14)
02/07/18	House	Roll call Yeas-103 Nays-0 (House Journal-page 15)
02/08/18	House	Read third time and sent to Senate (House Journal-page 13)
02/08/18	Senate	Introduced and read first time (Senate Journal-page 11)
02/08/18	Senate	Referred to Committee on Banking and Insurance (Senate Journal-page 11)
02/20/18	Senate	Committee report: Favorable Banking and Insurance (Senate Journal-page 12)
02/21/18		Scrivener's error corrected
03/29/18	Senate	Read second time (Senate Journal-page 39)
03/29/18	Senate	Roll call Ayes-43 Nays-0 (Senate Journal-page 39)
04/18/18	Senate	Read third time and enrolled (Senate Journal-page 19)
05/01/18		Ratified R 185
05/03/18		Signed By Governor
05/11/18		Effective date 05/03/18
05/14/18		Act No. 172

VERSIONS OF THIS BILL

1/23/2018
2/1/2018
2/2/2018
2/20/2018
2/21/2018

H. 4656

NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(A172, R185, H4656)

AN ACT TO AMEND SECTION 38-9-200, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REINSURANCE CREDITS, SO AS TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO ADOPT ADDITIONAL REQUIREMENTS FOR REINSURANCE CREDITS, TO REQUIRE A REINSURER TO DEMONSTRATE IT HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS TO QUALIFY FOR A CREDIT, TO ALLOW FOR THE REDUCTION OF A TRUSTEED SURPLUS FOR AN ASSUMING INSURER WHO HAS PERMANENTLY DISCONTINUED UNDERWRITING NEW BUSINESS, TO ALLOW FOR CREDIT WHEN REINSURANCE IS CEDED AND ENUMERATE CERTAIN ELIGIBILITY REQUIREMENTS, TO ALLOW FOR AN ASSUMING INSURER WHO IS NOT LICENSED, CERTIFIED, OR ACCREDITED IN THIS STATE TO BECOME ELIGIBLE FOR A CREDIT UNDER CERTAIN CIRCUMSTANCES, TO ALLOW THE DIRECTOR TO SUSPEND OR REVOKE THE ACCREDITATION OR CERTIFICATION, TO REQUIRE AN INSURER TO MANAGE ITS REINSURANCE RECOVERABLES PROPORTIONATE TO ITS BOOK OF BUSINESS, AND TO AUTHORIZE THE DIRECTOR TO ADOPT RULES AND REGULATIONS; AND TO AMEND SECTION 38-9-210, RELATING TO LIABILITY REDUCTIONS FOR REINSURANCE, SO AS TO AUTHORIZE THE DIRECTOR TO ADOPT ADDITIONAL REQUIREMENTS FOR AN ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED BY A DOMESTIC INSURER AND TO EXPAND THE ACCEPTABLE FORM OF SECURITY FOR A LIABILITY REDUCTION.

Be it enacted by the General Assembly of the State of South Carolina:

Reinsurance credits certification

SECTION 1. Section 38-9-200 of the 1976 Code is amended to read:

"Section 38-9-200. (A) Credit for reinsurance must be allowed a domestic ceding insurer as an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (B), (C), (D), (E), (F), or (G) provided that the director or his designee may, pursuant to subsection (M), adopt by regulation additional specific requirements in relation to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements, or the circumstances pursuant to which a credit may be reduced or eliminated. Credit only may be allowed under subsection (B), (C), or (D) of this section as respects cessions of those kinds or classes of business 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. If meeting the requirements of subsection (D) or (E), the requirements of subsection (H) also must be met.

(B) Credit must be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State, approved as a reinsurer by the director or designee provided by Section 38-5-60, or licensed as a captive reinsurance company pursuant to Chapter 90 of this title. It is not the intent of this provision to allow an insurer domiciled outside this State to take credit for reinsurance in its financial statements based on the domestic license, authorization, accreditation, or 'substantially similar' status of the captive reinsurance company.

(C) Credit must be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this State. An accredited reinsurer is one which:

- (1) files with the director or designee evidence of its submission to this state's jurisdiction;
 - (2) submits to this state's authority to examine its books and records;
 - (3) is licensed to transact insurance or reinsurance in at least one state or, for a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance, in at least one state;
 - (4) files annually with the director or designee a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and
 - (5) demonstrates to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement at the time of its application if it maintains a surplus as it regards policyholders of no less than twenty million dollars and its accreditation has not been denied by the director or his designee within ninety days after the submission of its application.
- (D)(1) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:
- (a) maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - (b) submits to the authority of this State to examine its books and records.
- (2) The requirement of Section (D)(1)(a) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.
- (E)(1) Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, defined in Section 38-9-220(B), for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director or his designee information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.
- (2)(a) Credit for reinsurance must not be granted under this subsection (E) unless the form of the trust and any amendments to the trust have been approved by:
- (i) the insurance commissioner of the state where the trust is domiciled; or
 - (ii) the insurance 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 also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of a court of competent jurisdiction in the United States. The trust must vest legal title to assets in the trustees of the trust for the benefit of the assuming insurers' United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the director or his designee.
- (c) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February twenty-eighth of each year the trustees of the trust shall report to the director or designee 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 may not expire before the next following December thirty-first.

(3) The following requirements apply to the following categories of assuming insurers:

(a) The trust fund for a single assuming insurer consists of funds in trust in 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 trustee surplus of not less than twenty million dollars. However, after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight may authorize a reduction in the required trustee surplus, but only after finding that the new required surplus level is adequate for the protection of domestic ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development based on an assessment of the risk. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows and shall consider all material risk factors including, but not limited to, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance by domestic ceding insurers covered by the trust.

(b)(i) In the case of a group including incorporated and individual unincorporated underwriters:

(A) for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust consists of a trustee account in an amount not less than the respective underwriter's several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(B) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trustee account in an amount not less than the respective underwriter's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) in addition to these trusts, the group shall maintain in trust a trustee surplus of which one hundred million dollars is held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account; and

(ii) The incorporated members of the group must not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) The group, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, shall provide to the director 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.

(c) In the case of a group of incorporated underwriters under common administration, the group shall:

(i) have continuously transacted an insurance business outside the United States for at least three years immediately before making application for accreditation;

(ii) maintain aggregate policyholders' surplus of at least ten billion dollars;

(iii) maintain a trust fund 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 pursuant to reinsurance contracts issued in the name of the group;

(iv) in addition, maintain a joint trustee surplus of which one hundred million dollars must be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(v) within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the director an annual certification of each underwriter member's solvency by

the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(F) Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (B), (C), (D), (E), or (G) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(G)(1) Credit must be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director or his designee as a reinsurer in this State and secures its obligations with the requirements of this subsection.

(2) In order to be eligible for certification, the assuming insurer must:

(a) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to this section;

(b) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the director or his designee pursuant to regulation;

(c) maintain financial strength ratings from two or more rating agencies deemed acceptable by the director or his designee pursuant to regulation;

(d) agree to submit to the jurisdiction of this State, appoint the director as its agent for service of process in this State, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by domestic ceding insurers if it resists enforcement of a final United States judgment;

(e) agree to meet applicable information filing requirements as determined by the director or his designee, both with respect to an initial application for certification and on an ongoing basis; and

(f) satisfy any other requirements for certification deemed relevant by the commissioner.

(3) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In addition to satisfying other requirements of item (2) of this subsection, in order to be eligible for certification:

(a) the association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities of the association and its members, which includes a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;

(b) the incorporated members of the association may not be engaged in any business other than underwriting as a member of the association and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(c) within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the director an annual certification by the association'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 association.

(4) The director or his designee shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director and a certified reinsurer.

(a) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must

agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgment and arbitration awards. Additional factors may be considered in the discretion of the director.

(b) A list of qualified jurisdictions must be published through the National Association of Insurance Commissioners (NAIC) Committee Process. The director or his designee shall consider this list in determining qualified jurisdictions. If the director or his designee approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director or his designee shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

(c) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

(d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director or his designee has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(5) The director or his designee shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director or his designee pursuant to regulation. The director or his designee shall publish a list of all certified reinsurers and their ratings.

(6) A certified reinsurer shall secure obligations assumed from domestic ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the director or his designee.

(a) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director or his designee and consistent with the provisions of this section, or in a multibeneficiary trust in accordance with subsection (E), except as otherwise provided in this subsection.

(b) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (E), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligation incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other domestic jurisdictions and for its obligations subject to subsection (E). It is a condition to the grant of certification under subsection (F) that the certified reinsurer shall bind itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other trust account.

(c) The minimum trustee surplus requirements provided in subsection (E) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that the trust shall maintain a minimum trustee surplus of ten million dollars.

(d) If the security is insufficient, the director or his designee shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(e) A certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(i) As used in this subsection, the term 'terminate' refers to revocation, suspension, voluntary surrender, and inactive status.

- (ii) If the director or his designee continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
- (7) If an applicant for certification has been certified as a reinsurer in a NAIC-accredited jurisdiction, the director or his designee has the discretion to defer to that jurisdiction's certification and to defer to the rating assigned by that jurisdiction, and the assuming insurer must be considered to be a certified reinsurer in this State.
- (8) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director or his designee shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
- (H) If the assuming insurer is not licensed, certified, or accredited to transact insurance or reinsurance in this State, the credit permitted by subsections (D) and (E) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- (1) that when the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of a court of competent jurisdiction in a state of the United States, comply with all requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of an appellate court in an appeal; and
- (2) to designate the director or designee or a designated attorney as its true and lawful attorney upon whom may be served lawful process in an action, a suit, or a proceeding instituted by or on behalf of the ceding company.
- (3) This subsection does not conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.
- (I) If the assuming insurer does not meet the requirements of subsection (B), (C), or (D), the credit permitted by subsection (E) or (G) may not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:
- (1) 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 subsection (E)(3), 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.
- (2) The assets must be distributed by and claims must 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.
- (3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part of them are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part of them must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
- (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
- (J) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.
- (1) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing, unless:

- (a) the reinsurer waives its right to hearing;
 - (b) the director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer; or
 - (c) the director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.
- (2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 38-9-210. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (G)(6) or Section 38-9-210.
- (K)(1) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.
- (2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the proper calendar year, or after it has determined that the reinsurance ceding to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that exposure is safely managed by the domestic ceding insurer.
- (L) The director may promulgate regulations to implement the provisions of this section and Section 38-9-210.
- (M) The director is further authorized to adopt rules and regulations applicable to reinsurance relating to arrangements described in subitem (1):
- (1) a regulation adopted pursuant to this subsection may apply only to reinsurance relating to:
 - (a) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
 - (b) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
 - (c) variable annuities with guaranteed death or living benefits;
 - (d) long-term care insurance policies; or
 - (e) any other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.
 - (2) A regulation adopted pursuant to this subsection may apply to any treaty containing policies issued or or after January 1, 2015, or policies issued prior to January 1, 2015, if risks pertaining to such pre-2015 policies are ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.
 - (3) A regulation adopted pursuant to this subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the valuation manual adopted by the NAIC under Section 11(B)(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.

(4) A regulation adopted pursuant to this subsection shall not apply to cessions to an assuming insurer that:

(a) is certified in this State; or

(b) maintains at least two hundred fifty million dollars in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices and licensed in at least:

(i) twenty-six states; or

(ii) ten states and licensed or accredited in a total of at least thirty-five states.

(5) The authority to adopt regulations pursuant to this subsection does not limit the director's general authority to adopt regulations pursuant to subsection (L).

(N) This act shall apply to all cessions after the effective date of this act under reinsurance agreements that have an inception, anniversary or renewal date not less than six months after the effective date of this act."

Director of the Department of Insurance authorized to adopt regulations

SECTION 2. Section 38-9-210 of the 1976 Code is amended to read:

"Section 38-9-210. An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 38-9-200 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer provided that the director or his designee may adopt by regulation pursuant to Section 38-9-200(M) specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements, or the circumstances pursuant to which a credit may be reduced or eliminated.

The reduction must 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 the assuming insurer as security for the payment of obligations, if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, for a trust, held in a qualified United States financial institution, defined in Section 38-9-220(B). This security may be in the form of:

(1) cash;

(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office and qualifying as admitted assets as defined in Section 38-13-80;

(3) clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution defined in Section 38-9-220(A) no later than December thirty-first of the year for which filing is being made and in the possession of, or in trust for, the ceding company 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, 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; or

(4) other form of security acceptable to the director or designee."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 1st day of May, 2018.

Approved the 3rd day of May, 2018.

Legislative Services Agency
<http://www.scstatehouse.gov>