

ORIGINAL HOUSE
BILL NO. HB0007

ENROLLED ACT NO. 21, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

AN ACT relating to insurance; revising reinsurer requirements; establishing procedures relating to reinsurer suspension and revocation; mandating reinsurers manage reinsurance recoverables and programs as specified; creating notification requirements under specified conditions; specifying the insurance commissioner's rulemaking authority applicable to reinsurance arrangements; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-5-112(a)(intro), (ii)(C), by creating a new subparagraph (E), (iv), (v), by creating a new paragraph (vi), (c)(intro), (ii) and by creating new subsections (e) through (h), 26-5-113(a)(intro), (ii) and (iii) and 26-5-116 by creating new subsections (c) through (g) are amended to read:

26-5-112. Credit allowed a domestic ceding insurer.

(a) Except as provided in W.S. 26-5-113, and in addition to any rules adopted by the commissioner pursuant to W.S. 26-5-116 relating to the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements and the circumstances pursuant to which credit will be reduced or eliminated, credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurer meets the requirements of any one (1) of the following paragraphs:

(ii) The reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state

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and whose accreditation has not been revoked by the commissioner. An accredited reinsurer is one which:

(C) Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one (1) state; ~~and~~

(E) Demonstrates to the satisfaction of the commissioner 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 as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000.00) and its accreditation has not been denied by the commissioner within ninety (90) days after submission of its application.

(iv) The reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (i) through (iii) or (v) of this subsection but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction; ~~or~~

(v) The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in W.S. 26-5-114(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on

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the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination. In the case of:

(A) ~~In the case of~~ A single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000.00). At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. 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 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 (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

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(B) ~~In the case of A~~ group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition:

~~(A)~~ (I) The group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group;

~~(B)~~ (II) Within ninety (90) days after its financial statements are due, 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; and

~~(C)~~ (III) 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.

(vi) The reinsurance is ceded to an assuming insurer that is certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the following provisions:

(A) Prior to certification by the commissioner, the assuming insurer must be eligible for certification. In order to be eligible for certification, the assuming insurer shall:

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(I) Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subparagraph (C) of this paragraph;

(II) Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by rule and regulation of the commissioner;

(III) Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by rule and regulation of the commissioner;

(IV) Agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state and agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(V) Agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(VI) Satisfy any other requirements for certification deemed necessary by the commissioner.

(B) Prior to certification by the commissioner, an association including incorporated and individual unincorporated underwriters must be eligible for certification by the commissioner. In order to be eligible for certification, an association must satisfy the

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requirements of subparagraph (A) of this paragraph and
comply with the following requirements:

(I) The association shall satisfy its
minimum capital and surplus requirements through the
capital and surplus equivalents, taking into account
liabilities, of the association and its members, which
shall include 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 commissioner to
provide adequate protection;

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

(III) Within ninety (90) days after
its financial statements are due to be filed with the
association's domiciliary regulator, the association shall
provide to the commissioner 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.

(C) Prior to certification, the assuming
insurer must be licensed and domiciled in a jurisdiction
eligible to be considered for certification by the
commissioner. The commissioner 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

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commissioner as a certified reinsurer. The commissioner shall:

(I) In order to determine whether the domiciliary jurisdiction of a non United States assuming insurer is eligible to be recognized as a qualified jurisdiction, 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 shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction shall not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner;

(II) Consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria developed under rule and regulation developed by the commissioner;

(III) Recognize as qualified jurisdictions the United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program;

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(IV) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, have the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(D) Each certified reinsurer must receive a financial rating from the commissioner. The commissioner 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 commissioner pursuant to regulation. The commissioner shall publish a list of all certified reinsurers and their ratings;

(E) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this paragraph at a level consistent with its rating and as specified by rule and regulation promulgated by the commissioner. In fulfilling the requirements of this subparagraph:

(I) 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 commissioner and consistent with the provisions of W.S. 26-5-113, or in a multibeneficiary trust in accordance with paragraph (v) of this subsection and subsection (b) of this section, except as otherwise provided in this paragraph;

(II) If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (v) of this subsection and subsection (b) of

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this section 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 obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to paragraph (v) of this subsection and subsection (b) of this section. It shall be a condition to the grant of certification under this paragraph that the certified reinsurer have bound 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 trust account, out of the remaining surplus of the trust any deficiency of any other trust account;

(III) The minimum trustee surplus requirements provided in paragraph (v) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that any trust shall maintain a minimum trustee surplus of ten million dollars (\$10,000,000.00);

(IV) With respect to obligations incurred by a certified reinsurer under this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit upon finding there is a material risk the certified reinsurer's obligations will not be paid in full when due;

(V) For purposes of this paragraph, a certified reinsurer whose certification has been terminated

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for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations. If the commissioner 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. As used in this subdivision, "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

(F) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner may defer to that jurisdiction's certification and may defer to the rating assigned by that jurisdiction, and the assuming insurer shall be considered to be a certified reinsurer in this state;

(G) 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 paragraph, and the commissioner shall assign a rating that takes into account the reasons why the reinsurer is not assuming new business, if relevant.

(c) If the assuming insurer is not licensed, certified or accredited to transact insurance or reinsurance in this state, the credit permitted by paragraphs (a)(iii) and (v) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

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(ii) To designate the commissioner 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~~ insurer.

(e) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification in accordance with the following:

(i) The commissioner shall give the reinsurer notice and opportunity for hearing. The suspension or revocation shall not take effect until after the commissioner's order on hearing, unless:

(A) The reinsurer waives its right to a hearing;

(B) The commissioner'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 under subparagraph (a) (vi) (F) of this section; or

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

(ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension

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qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with W.S. 26-5-113. 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 subparagraph (a)(vi)(E) of this section or W.S. 26-5-113.

(f) 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 (30) days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds fifty percent (50%) 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.

(g) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty (30) days after ceding to any single assuming insurer or group of affiliated assuming insurers more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate the exposure is safely managed by the domestic ceding insurer.

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(h) Credit for reinsurance ceded to a certified reinsurer is limited to reinsurance contracts entered or renewed on or after the effective date of the certification of the assuming insurer by the commissioner.

26-5-113. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

(a) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. 26-5-112 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, and such provided that the commissioner may adopt rules and regulations establishing additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in W.S. 26-5-116 and the circumstances pursuant to which credit will be reduced or eliminated. The 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 the assuming insurer as security for the payment of obligations thereunder, if the 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 W.S. 26-5-114(b). This security may be in the form of:

(ii) Securities listed by the securities valuation office of the ~~National Association of Insurance Commissioners~~ NAIC, including those deemed exempt from filing as defined by the purposes and procedures manual of

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the NAIC securities valuation office, and qualifying as admitted assets;

(iii) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States institution no later than December 31 in respect of the year for which filing is being made, and in the possession of 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; or

26-5-116. Rules and regulations; reporting.

(c) In addition to the authority provided by subsection (a) of this section, the commissioner may adopt rules and regulations applicable to reinsurance arrangements. A regulation adopted pursuant to this subsection may apply only to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

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(iv) Long-term care insurance policies; or

(v) Any other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(d) A regulation adopted pursuant to paragraph (c)(i) or (ii) of this section may apply to a treaty containing policies issued on or after January 1, 2015 and policies issued prior to January 1, 2015 if the risk pertaining to the policies issued prior to January 1, 2015 is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(e) A regulation adopted pursuant to subsection (c) of this section may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules promulgated under this section, to use the valuation manual adopted by the NAIC under section 11B(1) of the NAIC standard valuation law, including all amendments adopted by the NAIC and in effect on the date the calculation is made, to the extent applicable.

(f) A regulation adopted pursuant to subsection (c) of this section shall not apply to cessions to an assuming insurer that:

(i) Is certified in this state or, if this state has not adopted provisions substantially equivalent to section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or

(ii) Maintains at least two hundred fifty million dollars (\$250,000,000.00) in capital and surplus

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when determined in accordance with the NAIC accounting practices and procedures manual, including all amendments adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is:

(A) Licensed in at least twenty-six (26) states; or

(B) Licensed in at least ten (10) states and licensed or accredited in a total of at least thirty-five (35) states.

(g) The authority to adopt rules pursuant to subsection (c) of this section does not limit the commissioner's general authority to adopt rules pursuant to subsection (a) of this section.

Section 2. W.S. 26-5-112(a)(ii)(D)(I) and (II) is repealed.

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Section 3. This act is effective July 1, 2017.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk